United States Court of Appeals

for the Second Circuit

APPENDIX

74-2480

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-2480

DEC 27 1974

ON PETITION TO REVIEW ORDERS
OF THE FEDERAL POWER COMMISSION

JOINT APPENDIX

The City of Groton; Borough of
Jewett City; Second Taxing District,
City of Norwalk; Third Taxing District,
City of Norwalk; City of Norwich;
Town of Wallingford, and the Connecticut
Municipal Gas and Electric Association,

Petitioners,

v.

Federal Power Commission,

Respondent,

Connecticut Light & Power Co.,

Intervenor.

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

The Connecticut Light and Power Company) Docket No. E-7743

INITIAL DECISION UPON A FILING FOR INCREASED RATES

(July 29, 1974)

APPEARANCES

James R. McIntosh, Carl B. Nelson, Michael F. Holloran, Jerome Ackerman, James R. McCotter and Richard C. MacKenzie for The Connecticut Light and Power Company

Edward F. Malone and Richard P. Taylor for American Cyanamid Company

Charles F. Wheatley, Jr., Thomas McHugh, Jr., William T. Miller, Jerome C. Muys and Grace Powers Monaco for Connecticut Municipal Intervenors

Mark G. Magnuson, Gregory Grady and Julius C. Meier for the Staff of the Federal Power Commission

LANDE, Presiding Administrative Law Judge: This proceeding involves an investigation of the lawfulness and reasonableness of The Connecticut Light and Power Company's (CL&P or Company) newly proposed FPC Electric Tariffs, tendered for filing in this docket on June 16, 1972, suspended by Commission order until January 16, 1973, and placed into effect thereafter subject to refund.

This tariff proposes increases of about $1,228,000 annually in the previously-negotiated rates for firm wholesale jurisdictional electric service to CL&P's six municipal customers: City of Norwich; Borough of Jewett City; Second Taxing District, City of Norwalk; Third Taxing District, City of Norwalk; Town of Wallingford; and City of Groton (Municipals).

American Cyanamid Company (Cyanamid) is a customer of the Town of Wallingford. Cyanamid maintains a plant at Wallingford which purchases all of its electric power from Wallingford, and is the Town's largest employer with approximately 800 employees.

The Commission permitted intervention by the Municipals and by Cyanamid.

Procedural Background

The Municipals moved to reject CL&P's filing and requested the Commission to grant summary judgment on the motion. The Municipals contended that CL&P had not validly terminated the existing contracts which did not authorize the proposed new rates. The Commission concluded that due notice of termination was given to the municipal customers at least one year prior to the effective date of termination. The Commission held that these contracts had been properly terminated as of the date the Company's proposed new rates become effective. The Commission's order of August 14, 1972, denied the motions for rejection. On October 10, 1972, the Commission denied the Municipals' Application for Rehearing. The Municipals then appealed to the United States Court of Appeals for the District of Columbia Circuit. On December 13, 1973, the court issued its judgment in Connecticut Municipal Group v. F.P.C. CADC, No. 73-2041, affirming the Commission's orders.

In accordance with the Commission's orders, CL&P and the Commission Staff submitted their respective prepared testimony and exhibits at the pre-hearing conference held on January 23, 1973.

The hearing reconvened on July 31, 1973, at which time the prepared testimony and exhibits of the Municipals and Cyanamid were received in evidence, as were CL&P's rebuttal testimony and exhibits. The hearings recessed several times, and extended through December 7, 1973. The parties and Staff offered 100 exhibits, of which about 90 were received in evidence. At the conclusion of the hearing it was provided for simultaneous filing of initial and reply briefs. At the request of the parties, and for good reason, the briefing dates have been delayed twice.

The evidence of CL&P, Staff and Municipals consisted of testimony and exhibits describing the Company's operations, rate of return, overall cost of service, wholesale cost of service, the design of the proposed rate and the terms and conditions of service thereto.

Cyanamid filed direct testimony and exhibits on selected aspects of the Company's cost of service and the structure of the rate design.

On rebuttal CL&P presented further testimony and exhibits addressed to the contentions of the opposition.

The issues raised by the parties are hereinafter discussed and determined by topic.

On June 4, 1974, the Town of Wallingford requested that the issue of the propriety of the "Buyer's System Demand" provision be severed from the present proceeding and that a final Commission decision be entered on that issue within 30 days.

Wallingford represented that within the next 60 days, it must execute a contract for fuel manufactured from refuse and/or steam produced by a plant using such fuel. Wallingford stated that the proposed agreement would be ecologically desirable, but that the "Buyer's System Demand" provision makes it uneconomical. Wallingford stated that the provision unfairly requires demand for CL&P billing purposes to be based on Wallingford's demand on all power sources, including self-generation, rather than just its demand on CL&P. It was alleged that the provision, therefore, imposes a penalty for self-generation because Wallingford will experience increasing cost per kilowatt hour of purchased power as it increases its own generation using additional fuel or steam purchased under the contemplated contract.

Wallingford's request for emergency relief was denied by the Commission by Order issued July 3, 1974.

The Application

CL&P is contemplating construction of new facilities which program is based on load forecasting by the Company, Northeast Utilities Service Company, and the New England Power Pool. In order to meet the power demands, CL&P estimated that construction expenditures for the six-year period of 1972 through 1977 would be \$936.7 million. This includes \$464.3 million for nuclear and pumped-storage projects to be added to CL&P's electric production plant; \$130.4 million for electric transmission plant; \$272.9 million for electric distribution plant, consisting of equipment needed to deliver power to customers; and \$31.6 million for general plant. CL&P submits that it cannot delay these expenditures, because it must provide continuous electric service to meet growing demand. These expenditures require large amounts of long-term funds.

CL&P contends that there have been large increases in cost for labor, materials, supplies, taxes, and in the cost of new senior capital. Most of these cost increases are outside the direct control of management, and can no longer be offset by technological advancements and operating improvements.

In 1965, cash generated from internal sources, principally depreciation accruals and retained earnings, provided 70% of the Company's cash requirements for new construction. Since 1965, internal cash generation has shown an alarming and steady decline.

CL&P submits that no more than 25% of the cash requirements for new construction in the next several years would be provided from internal sources. The remainder must be provided through public financing. CL&P contends that during the succeeding six year period, about $700 million of new outside capital must be raised in financing the proposed $936.7 million construction program.

The proposed rate increase as filed in this proceeding is allegedly the bare minimum requirement to maintain the financial integrity of the Company.

CL&P had to resort to short-term borrowings of over $37 million outstanding at December 31, 1971 in addition to the requirements associated with the 1972 construction program. CL&P lost its Aaa bond quality rating in 1968 and faces the threat of a further downgrading from Aa to A unless it can achieve a significant improvement in the earnings protection for its mortgage bonds. A lower bond rating allegedly results in higher costs to the Company for new bond and preferred stock issues.

CL&P submits that management has diligently pursued all means available for reducing its cost of service. However, economic forces beyond its control have led to the point where there is no alternative available except rate relief. Consequently, CL&P urges the Commission to approve the proposed rate increase in order to improve the Company's earnings coverages of interest and preferred dividends.

RATE OF RETURN

The issue now before us is the proper overall rate of return. Since there is no meaningful issue on capitalization and cost of senior capital, it will be merely described in due course. Because of this the rate of return issue focuses on the proper allowance on equity. The parties advocate varying rates of return from 8.50 - 8.75% (Company), 8% (Staff) down to 7.15% (Intervenors). Their respective positions are summarized below.

The Company presented financial data on 15 comparable electric companies, the electric utility industry as a whole, and industrial enterprises. On the basis of this analysis, CL&P alleges that its common stock should currently earn no less than 13½%. Weighted by capital structure, the cost of capital to the Company currently stands at 8.60%. In light of the Company's current cost of capital, the almost certain higher cost of capital in the immediate future, the Company's increasing financing requirements, and the very thin margin of protection for its debt securities, and many other factors, the fair rate of return claimed by the Company is in the range of 8½ to 8-3/4%.

The Commission Staff recommended a rate of return on equity of 11.50%, which figure it reduced to 11.47% later during the hearing, and an overall rate of 7.875%, later increased to 8%.

The Municipals relied on a cost of capital approach and a detailed study of earnings-price ratios. They concluded that 10.00% to 10.50% is the appropriate level for return on the Company's common stock, and that the fair rate of return on the Company's jurisdictional investment ranges from 7.15 to 7.45%.

Cyanamid stated that it would rely in general on the presentations of the Staff and the Municipal Intervenors in regard to rate of return.

Company's Rate is Too High

The Company measured the realized return on common equity experienced by fifteen companies, considered data regarding the experience of the electric utility industry as a whole, and determined the cost of equity by measuring the rate of earnings on common equity capital. However, CL&P failed to place itself in terms of risk on the scale of comparability of industrials in general, companies in "defensive" industries which, like utilities, are comparatively least affected by economic cyclicality, utilities as a whole and pipelines. The Company failed to make an in-depth study of a comparison of the risks to the Company compared to the risks attached to alternative opportunities. Staff points out correctly that the key to a proper interpretation of the comparative earnings approach is a careful study of the many different risks which a capital investor must take into consideration when comparing alternative opportunities available to him, and the Company failed to undertake such a study.

Both the Staff and the Municipals refer to the rate of return on equity allowed by relatively recent Commission decisions and submit that the rate requested by the Company is excessive. Of course, no two utility cases are alike in regard to the need for rate relief. In a proceeding of this nature determining the proper allowance for cost of capital and the rate of return is often a matter of informed judgment. Having given due consideration to all the cases cited by the parties, it is found, and concluded herein that the rate of return proposed by CL&P is excessive and not warranted. Accordingly, the 8.50 - 8.75% rate of return requested by the Company is hereby rejected.

Municipals' Rate is Too Low

The Municipals' rate of return presentation, concluded that the fair rate of return for the Company ranged from 7.15% to 7.45%. This conclusion was based on a determination that the cost of long-term debt is 5.86%, that the cost of preferred stock capital is 6.24%, and that the proper cost rate of common equity ranges from 10.00% to 10.50%.

This is based on an analysis of certain cost of equity capital during the ten-year period 1962 to 1971, the earnings-price ratios of Northeast Utilities, the Company's parent; nine comparable operating electric companies; seven holding companies; and certain non-utility companies. They then used an adjustment factor of 10% to account for costs of financing and inflation, and a 25% adjustment factor to account for future growth in earnings per share. It also relied on earnings-price ratios for the period 1968 to 1971 to account for "abnormalities" occurring in the stock market during the past few years. The Municipals failed to demonstrate the validity of the 25% adjustment factor used to account for future growth in earnings. This adjustment was evidently based on judgment.

In showing the cost to the Company of long-term debt as 5.86%, the Municipals failed to take into account the Company's 1973 issue of $50 million, Series Z, 7-5/8% bonds. Another shortcoming of the Municipals' case is the erroneous implication that CL&P has considerable flexibility in the timing of its debt offerings.

One of the criteria in the Municipals' choosing of nine companies was that each derived at least 90% of its total operating revenues from sales of electric energy. However, CL&P derives only 84% of its revenues from sales of electric energy.

The Municipals use the Earnings Price Ratio (E/P) method in this proceeding. This method implies a pure mathematical formula, yet it is relying on judgment factors for a major element of the computation. This method relies on ratios; however, arbitrary judgment data is plugged into these ratios to create an answer acceptable to the party doing the computing. With the E/P approach, the judgmental variable is an adjustment to reflect market pressure.

In recent cases, the Commission discussed the E/P theory and concluded that the comparable earnings approach which is expanded to include market considerations was the preferable method. Union Electric Company, 47 FPC 144. In this connection Staff pointedly cites Algonquin Gas Transmission Co., 43 FPC 53 and Tennessee Valley Municipal Gas Association v. Alabama-Tennessee, 45 FPC 633.

For the reasons given above the 7.15 - 7.45% rate of return recommended by the Municipals in this proceeding is rejected as being inadequate to cope with the present financial and economic conditions.

Staff's Rate is Reasonable

The Commission Staff submitted that the fair and reasonable return on the Company's equity is 11.47%, and that the fair and reasonable overall rate of return on the jurisdictional rate base is 8%. It uses the opportunity/cost method in determining a return

on equity. Staff concedes that a return on equity is largely a judgmental decision, based on an appraisal of alternative opportunities in the capital market. Union Electric Company, 47 FPC 144 (1972).

The Staff's initial return on equity figure was revised downward from 11.53% to 11.47%, because of the Company's improved earnings in 1972. Staff updated the capitalization to reflect the capital structure of the Company as of June 30, 1973, the date of the hearing. This is consistent with Commission decisions. See Union Electric, supra.

In computing the embedded cost of debt, Staff subtracted the amount of outstanding short-term debt of the Company from all outstanding debt to derive the proper figure to be considered. This procedure is consistent with El Paso Natural Gas Company, 46 FPC 454 (1971). The resulting figure is 51.60% of the entire capital structure.

The weighted cost of debt which is part of the recommended overall rate of return is 6.05%. The weighted cost of preferred stock is 6.29%.

The resulting capitalization of the Company which Staff contends is appropriate is as shown below:

	Amount of Capital	Capital Ratios	Cost of Allowance	Weighted Return
Long Term Debt	$495,600,000	51.60%	6.05%	3.122%
Preferred Stock	125,000,000	13.00%	6.29%	.816%
Common Equity	340,660,000	35.40%	11.47%	4.062%
	$961,260,000	100.00%		8.000%

CL&P asserts that Staff failed to take into consideration that the Company's earnings available to common shares were reduced for the first six months of 1973. However, because of seasonal fluctuation it is more desirable to consider the experience over a full operating cycle, and not for six months alone. CL&P says that Staff was unduly influenced by Exhibit 28, which shows what the rate of return for 1971 would have been had the requested rate increase been approved. Staff denies that suggestion. The Company has alleged that Staff ignored the risk of regulatory lag. Staff demonstrated during cross-examination that this risk was given due consideration. The Company suspects that the Staff was influenced by the relatively small amount (5%) of the Company's jurisdictional business. Staff denies that too. CL&P took issue with a statement

that the Company continues to be financially sound, despite its declining interest coverage and the fact that it has temporarily lost its financial flexibility. Staff says that it did take into account the Company's Aa rating by Moody's which is still higher than the typical A-rating for large electric utilities. The Company claims that the recent case, Connecticut Light and Power Company, Docket No. E-8105, et al., supports an argument that a higher rate of return on common equity should be allowed. The facts in Docket No. E-8105, et al., are distinguishable from those in this proceeding. This is a long term wholesale sale of power which we are considering, not short term unit contracts. Staff is right in saying that the reasons given in the initial decision issued February 4, 1974, in Docket No. E-8105, et al., are not relevant to this proceeding.

Staff's recommended overall rate of return of 8% is found to be reasonable for Connecticut Light and Power. It is fully supported by the evidence presented in this proceeding, and is adequate for the Company to maintain its financial integrity, to attract capital, to build new facilities, and to meet its customer's needs for reliable service.

RATE BASE AND COST OF SERVICE

The following will cover rate base and various cost issues, namely those containing differences between the costing methods used by CL&P and the adjustments proposed by the Intervenors and the Commission Staff. All parties utilized calendar year 1971 as the test year. The basic data for CL&P's cost of service determination were obtained from the accounting records as reported to the Commission in the 1971 FPC Form 1 report.

For the test year ending December 31, 1971, CL&P claims a rate base of $568,191,983. The Commission Staff recommends a rate base of $554,881,662, or $13,310,321 less. The Municipals would reduce the rate base urged by CL&P by $11,400,214. Discussion of the sundry proposed adjustments follows.

Averaging the Balances

Staff advocates that the Company's rate base should be reduced by $6,218,887 through the use of average 13 monthly balances rather than average beginning and year-end balances as used by the Company.

Company argues that because additions to plant may be put in service months before the year-end, the 13 monthly balances method would not properly reflect the plant additions.

CL&P relies on the Commission's Regulations, 18 C.F.R. Section 35.13(b)(4)(iv), which specify the use of beginning and end of year balances for Statements D and E. However, there is no Commission

requirement that this method also be used to compute a rate base for the purposes of determining just and reasonable rates. Staff's method produces a more accurate average, as large additions to plant can be put in service no more than one month from the 13 month average, whereas such plant additions could be put in service several months from the beginning and year end balances.

The use of the average 13 monthly balances has been recommended in other cases for many years 1/ and Staff correctly submits that this method is most appropriate and consistent with Commission procedure.

The Intervenors further argue that one month's balance of Montville Unit No. 6 should be eliminated from the rate base because the unit did not commence operations until July 29, 1971. The Company replies convincingly that special treatment of this single item must be denied. Otherwise, the inquiry into special items of rate base according to exact calendar dates would be an endless and ultimately unproductive effort. The request to eliminate Montville Unit No. 6 is denied.

The Staff's recommended reduction of the Company's rate base by $6,218,887 through the use of 13 monthly balances is hereby approved.

Average Cost of Intangible Plant

The Staff recommends that CL&P's rate base be reduced by $1,400,222 through elimination of the balance remaining in intangible plant during the test year. Company argues that the unamortized balance should be in Company's rate base, because this was the understanding of the parties in 1965 when the Commission, by letter order, directed the Company to amortize these expenses. Staff testified that the letter allowing the 10 year amortization was simply an accomodation to the Company because CL&P had not previously been under the Commission's jurisdiction. The letter order itself (Exhibit No. 55) does not make any reference as to how the unamortized portion of these expenses should be treated for rate-making purposes.

Accordingly, the Staff's recommended reduction of the Company's rate base by $1,400,222 through elimination of the average plant balance remaining in intangible plant during the test year is hereby approved.

1/ Union Electric Company, 47 FPC at 151, 176; United Fuel Gas Company, 12 FPC 251, 256.

Normalizing Cost of Nuclear Unit

Staff recommended an adjustment to normalize the cost of the Company's share in the Millstone #1 nuclear unit which has been producing power commercially only since December 28, 1970. The subsequent test year data was allegedly unsuitable for rate-making purposes because it reflected operation of an immature unit during its break-in period. The actual kilowatt-hour output of this unit during the actual test year level of experience was 6,204 hours' use, while its rated capacity is 7,000 hours' use.

The proposed adjustment to normalize the operation of Millstone is based upon a test year concept under which all abnormalities, to the extent that they exist, should be discounted for ratemaking purposes. This basic approach is generally recognized by the Company as it has proposed similar adjustments to compensate for abnormalities in weather and hydroelectric generation, as well as numerous other ratemaking adjustments. The Company's own estimate of 7,000 hours' use of the rated capacity of its portion of this unit is a realistic level of operation. It is based upon its report to the Atomic Energy Commission entitled "Millstone Nuclear Power Station Unit 1, Environmental Report, Operating License Stage."

The Company itself attributed Millstone's reduced levels of operation to abnormal mechanical failures which have been its experience to date. Had the Company not encountered such abnormal mechanical difficulties, Millstone would have actually achieved its design level of operation of 7,000 hours' use of its rated capacity.

Since Millstone is a relatively new generating facility which has not achieved its design capability to date, Staff justifiably concluded that this behavior was characteristic of an unseasoned unit experiencing abnormal failure rates during its break-in period.

The extensive evidence in the record on the operation of Millstone Nuclear Power Station, Unit No. 1, has been duly reviewed. The evidence in the record warrants the net adjustment of $1,275,201 proposed by Staff to normalize the Millstone 1 operations, and such adjustment is ordered herein.

Negative Income Tax Allocation

The Company claims $52,183 as current federal income tax expense in its adjusted cost of service for the test year. There is, in addition, a credit for deferred income taxes which amounts to a negative $263,005. The Staff argues that when there is a negative income tax liability it should not be booked in Account No. 409, as the Company did here, and that in such a case Account 409 would have a zero balance. As a result of the elimination of this negative income tax figure and the use of Staff's proposed

adjustment in the Company's cost of service, there would be no federal income tax liability for the test year.

The Company's position in this matter conforms with Commission's treatment of consolidated income tax return savings. In Georgia Power Co., 1/ Docket No. E-7548, Initial Decision issued August 3, 1972, the judge permitted the company to exclude from its expenses calculation some $1.17 million in savings it had realized because along with its sister companies it filed a consolidated federal income tax return. The judge relied on Florida Gas Transmission Co., 47 FPC 341, 363 (1972), where the Commission held that in determining the federal income tax allowance, the full statutory rate should be allowed.

The Company's federal income tax allocation fairly reflects its tax liabilities, is consistent with the Commission's treatment of consolidated tax return savings, and is hereby approved.

Purchased Power

The Company's adjustment normalizes its actual test year hydroelectric generation. Staff agrees in principle that hydroelectric kilowatt hour generation should be adjusted downward to reflect average water conditions on its system, but Staff does not agree with the Company's method of pricing hydro replacement energy. The Company made an adjustment in its cost of service to reflect an increase of $39,000 in electric operation expense to compensate for less fuel required in 1971 because of the abnormally warm weather. Staff states that this weather adjustment is not sufficiently supported in detail, but, because of its minor impact upon the costs allocated to the wholesale customers involved in this proceeding, Staff includes this amount in the cost of service study. However, Staff submits that the Company has failed to make the corresponding adjustments to the system energy output due to weather normalization. Since the Company ignores the effect the additional weather-induced generation would have on sales and on energy responsibility, Staff contends that the Company improperly allocates a portion of the claimed $39,000 adjustment based on actual rather than normalized sales. The Presiding Judge agrees.

The Municipals would eliminate three non-recurring power purchases, namely from Rochester Gas & Electric, from the Connecticut Municipals and from the United Illuminating Co. Bridgeport Harbor No. 3 unit, because all three respective contracts expired during the test year. The Municipals should prevail in this proposed adjustment.

1/ Mimeo page 23. In 1974, parties asked Commission to approve a settlement agreement.

A salient issue is the recognition of payments under the Northeast Utilities Generating and Transmission Agreement (NU G&T). This payment comprises two items. One is a transition payment of $594,500 and the other is the total payment of $3,047,135 of which the $594,500 is a part. The transition payment represents a recognition by CL&P that its costs were greater than those of its affiliated companies and its concession that it ought not to benefit from the NU G&T all at once. While this may gratify corporate interests, it does not seem to protect any public interest. CL&P does not even claim any benefit from a transition period or the transition payment. This was Intervenors' original position, and Staff concurs. The $594,500 transition payment is hereby rejected.

Municipals contend that the $3,047,135 which represents an inter-corporate payment should similarly be rejected. But they never come to grips with the benefit argument. To disallow $3,047, for theoretical reasons would imply that CL&P should get 105,573,09 KWH of inter-change power for nothing. That would seem to be paten unfair. The big thing that CL&P was getting was not so much energy as capacity. But the need for capacity doesn't establish the propriety of the entire $3,047,135. The following table is an attempt at arriving at an equitable allocation (Based on Exhibit 49):

	Total	CL&P	Others
al Costs of Self-Generation, tside Purchases, Sales and change Operations			
Capacity	$ 106,089,878	$ 52,569,877	$ 53,520,001
Energy	83,050,927	42,176,319	40,874,608
Total	$ 189,140,805	$ 94,746,196	$ 94,394,609
theast Utilities G&T reement al Costs			
Capacity	$ 0	$ 2,684,638	$ (2,684,638)
Energy	0	362,497	(362,497)
Total	$ 0	$ 3,047,135	$ (3,047,135)
l Costs Reflecting nsfers			
apacity	$ 106,089,878	$ 55,254,515	$ 50,835,363
nergy	83,050,927	42,538,816	40,512,111
Total	$ 189,140,805	$ 97,793,331	$ 91,347,474
ore Transfers	17,658,955,863	8,938,497,114	8,720,458,749
nsfers per NU G&T Agreement	(4,375,205)	105,573,096	(109,948,301)
er Transfers	17,654,580,658	9,044,070,210	8,610,510,448
Capacity Costs			
ore Transfers	0.60¢	0.59¢	0.61¢
er Transfers	0.60¢	0.61¢	0.69¢

The table shows that capacity costs swung from 0.59¢ before applying the terms of the agreement to 0.61¢ afterwards for CL&P and vice versa for its affiliates. Naturally, Northeast Utilities system costs remained at 0.60¢. Absent any other record support, and in the light of the valid arguments made by Intervenor CL&P should no more have cheaper capacity costs than it should have higher capacity costs. Further, the allocation argument of Intervenors is partially met. In short, the capacity costs allocated to CL&P should be 0.60¢ (rounded here) per KWH or $54,347,612. Accordingly, the $3,047,135 should be reduced by $906,903 to $2,140,232. (No adjustment is made in the energy costs).

COST ALLOCATION

Energy Allocation Ratios

Staff contends that the energy allocation ratios for Wallingford, Norwich, and Norwalk II do not reflect actual 1971 service requirements from the Company, but are based upon the anticipated energy requirements of these customers.

Cross-examination of Witness Keith shows that the results presented by the Company, in fact, reflect both the lower anticipated use of demand and energy by the wholesale customers under the proposed rate and the results under the actual use of energy in the test year under the rates in effect at that time. The record shows that the Company adequately justified its rationale for this assignment and that the Staff did not prove its challenge. No change is necessary.

Assignment of Transmission Plant

The Company says that it was justified in separating its 69 KV system from the remainder of the bulk transmission facilities because it wanted to be fair to the Town of Wallingford, which is served by the Company at 115 KV, and therefore, the Company believes that no portion of the 69 KV system should be allocated to this customer. However, the Company's transmission system is a fully integrated network, in which the 115 KV and 69 KV facilities cannot be separated for cost allocation purposes, and the evidence in this proceeding fully supports Staff's opposition.

The Company says that it separated its 69 KV system from the remainder of the bulk transmission facilities to insure that the Town of Wallingford is not allocated any costs associated with 69 KV transmission. The Company evidently feels that the cost of transmission should be lower for Wallingford than it should be for those customers who are served at 69 KV. This argument is not convincing because the Company does not recognize such lower costs in its proposed rates to Wallingford. The Company's proposed rates would be the same for each customer whether service would be

rendered at 115 KV or 69 KV. If the Company actually believed that Wallingford should not be held responsible for the costs associated with 69 KV transmission, it should have developed a rate differential to recognize the claimed difference in cost between 115 KV and 69 KV service.

The costs of the 69 KV system should not be separated.

KVA versus KW Allocation

The Company is in favor of developing transmission and distribution demand allocation factors on the basis of KVA demands for each customer at the respective transmission levels. The Company asserts that this is a proper power factor correction. The Company also states that KVA is a billing determinant in the general service rate tariff designed for use by all the Company's large retail customers.

Staff points at inconsistencies in these arguments. The Company's present and proposed agreements rely on KW billing data to recover the bulk of the demand related revenues, not KVA demand data. There is no reason to allocate costs on a KVA basis simply because the agreements contain provisions for power factor correction. Also, the power factor adjustment clause, which the Company has proposed, is intended to produce revenues to cover specific costs. Since the Company proposed to recover such specific costs of power factor correction through a separate rate provision, there is no basis for adopting KVA data as the basis for allocating all power supply costs.

Staff questions the relevancy of the Company's assertion that it bills its large retail customers on a KVA basis. The Company has elected to use KW demand data as the basis for recovering transmission and distribution costs in its proposed billings to the resale customers. Thus, the Company's method of allocating costs on a KVA basis is inconsistent with the rationale it used in its proposed billing procedures for its resale customers.

The Presiding Judge agrees with Staff.

RATE DESIGN

Northeast Data

Staff objects to the use of the Northeast Utilities system load duration curve as a model. CL&P demonstrated the similarity between the load shape of the Northeast Utilities system and that of the Company, which is to be expected for affiliates operating in a relatively small geographic area. Staff states that proximity

does not justify the use of the Northeast system load curve as a model, even though the Company has presented evidence that similarity does exist in the load curves of the Northeast Utilities and Company systems. Staff also objects to the tariffs' blocked charges because the Company allocated its cost of service on the basis of monthly coincident peaks.

The record shows that the costs utilized by CL&P followed the reported costs filed by the Company for the test year 1971, with the exception of test year normalizations. CL&P submits that development of cost patterns on the basis of average Northeast Utilities system experience was a reasonable alternative for the complex analysis that would be required to reclassify transactions pursuant to the Generation and Transmission Agreement.

Staff suggests that a rate design follow the technique used in performing a cost of service study. Company replies that while total revenues realized under a rate form should not exceed the revenue totals determined by a cost of service study, the design of the demand and energy blocks and the measurement of demands should not be mandated by the study. Otherwise, no wholesale rate could ever have more than one energy block.

It is found herein that the Company's load shape data is sufficiently similar to that of the entire Northeast Utilities system to justify the system employed by CL&P for certain rate-making aspects, though not for others. The opposition failed to support the contention that the filed rate design improperly relie on Northeast Utilities data instead of Company data.

Stratified Rates

The Company has proposed an hours' use type rate with four energy blocks. The first block was designed to reflect the cost of supplying peaking capacity and energy. The second block was designed on the basis of intermediate capacity and energy, and the third and fourth blocks were designed on the basis of base load capacity and energy.

The Municipals contend that while the proposed tariff appears to provide for reductions in price for the power delivered by the Company to them based on the load factor achieved, the intricate, complex design and actual working of the rate produces an unfair result on the wholesale customers in that it makes it uneconomic for them to seek or acquire sources of power other than from CL&P.

Staff submits that the problem with said rate is that it bears no relation to the manner in which the Company has costed its services. The Company allocated costs in its cost of service based on its overall composite mix of generation, and did not brea down the composite mix into the base, intermediate, and peaking components.

Municipals complain, and rightly so, that the four block structure of the basic rate coupled with the load factor scheme produces arbutrary and discriminatory results.

The Staff contends that the Company's analysis of the pattern of operation of the Northeast Utilities system assumes that it is possible to identify loads with particular sources. Such identification cannot be done properly on an integrated system, especially with the further complication of having inter-system purchases and sales.

For the reasons demonstrated by Municipals and Staff it is ordered herein that the Company's high load factor hours' use block modifiers be deleted from the tariff.

The Ratchet Provision

The Staff, Cyanamid, and the Municipals presented testimony and arguments against use of the 12-month, 100% demand ratchet in wholesale customer billings. They urged that the demand ratchet should be eliminated from the rate, or at least modified to provide for potential outages of the peak-shaving facilities utilized by certain customers.

The Municipals have testified that because of the ratchet and system demand provisions, they will be unable to purchase power economically from other sources or add additional generation. Municipals submit that CL&P's ratchets are based upon peak demands created under the completely different operating conditions of the old rate in the period prior to January 16, 1973, the effective date of the new rate, after suspension.

Cyanamid contends that the ratchet provision places unreasonable burdens on customers with generating capacity during all 12 months of the year.

Staff poses that it is improper to utilize the 12 month period in establishing the initial buyer's system demand when the municipalities were operating during that time under a different rate in which the level of service was higher than it would be under the proposed rates, as reflected in the allocated resale cost of service.

It is found herein that Staff, Cyanamid and Municipals should be upheld in their demand that CL&P should eliminate the ratchet provision from the proposed rates. CL&P may, however, file a new provision to provide for potential outages of generating units owned and dispatched by the generating municipalities involved in this proceeding. It is so ordered.

Facility Charge

CL&P's proposed tariffs provide for facility charges. The Company has separately identified transmission lines, distribution substations, distribution lines and metering facilities which it considers to be devoted to serving the municipal customers involved in this proceeding, and has developed specific charges associated therewith which it incorporates directly into its proposed tariff rate schedule.

The Municipals contend that the facility charge should be eliminated entirely because: (1) CL&P has not treated these facilities as separately allocable facilities in its actual operations; and (2) the Company has utilized a levelized approach with respect to the facility charge which is inconsistent with the fully distributed cost approach utilized regarding other aspects of the Company's filing. Since the Company is unable to justify its costing approach to this facility charge, and also, is unable to show that such a charge comports with its actual or anticipated operating experience, it has failed to justify the charges. CL&P's rates for the Municipal wholesale customers are allegedly inflated by the proposed facility charge. The percentages of profit requested from the Municipals is allegedly in excess of the rate of return permitted to the Company in previous rate proceedings or requested in this proceeding and, therefore, the Municipals urge that it be adjusted downward to reflect the rate of return permitted in this proceeding.

Under the filed tariff the Municipals would have to pay a facilities charge "for service directly from the Company's bulk transmission system." They submit that similar charges were disapproved by the Commission in the Union Electric Co. case, 47 FPC 144 (1972), where it was held that in view of the Company's operation as a unified system it was appropriate to assign the entire transmission system of that company to the power pool and then allocate a fair portion to the appropriate categories of customers.

Staff and the Municipals made a good case for the impropriety of the Company's method of directly assigning bulk power supply transmission costs to specific customers. These costs are system related and were treated accordingly in the Staff's cost of service analysis. It is therefore held herein that the Company's charges for specifically assigned transmission facilities should be eliminated.

Power Factor Charge

Staff opposes the Company's proposed power factor charge because: (1) The $0.14 per RkVA has not been properly supported; (2) This will generate additional revenues which will provide added compensation for power factor correction costs which are

not incurred by the Company; and (3) The limits of 97% lagging and 95% leading are inappropriate for the Company's electric services as rendered. Staff says that if specific charges are to be made to recover specific costs, then each of the respective cost elements must be separately identified.

The Company did furnish certain information relating to the correction of lagging power factor on its system; however, Staff points out that no information was furnished relating to the correction of leading power factor on the Company's system. Because the proposed charge is separately stated in the Company's proposed tariff rates and would operate to generate additional revenues from the individual resale customers to recover specific costs of power factor correction, the explicit cost information required to support the level of the proposed charge should also have been provided by the Company.

Staff testified that the Company's proposed charge of $0.14 per RkVA will generate additional revenues which, when applied conjunctively with the proposed power factor limits, will provide added compensation to the Company for power factor correction costs which it has not incurred.

With respect to proposed power factor limits of 95% leading and 97% lagging, Staff was unable to determine the precise extent to which such limits would be reflective of the correction equipment costs contained in the power supply system. Staff points out that the composite power factor of the ultimate consumers is estimated by the Company to be about 87% lagging, while the resale customers' power factors are somewhat higher. These estimates tend to indicate that the Company's transmission system operates at an effective power factor condition in the order of 90% lagging.

Staff concludes that any charges for leading power factor would be inappropriate and should be eliminated from the proposed reactive demand rate, and that the proposed limit for lagging power factor of 97% should be reduced to 90% lagging. This is also consistent with the Company's prior agreements with the Municipal customers involved in this proceeding. Staff's recommendation is approved hereby.

Equity Considerations

Cyanamid complains that CL&P's proposed rate design places the wholesale municipal customers, particularly the Town of Wallingford, in a position where they are unable to compete economically with CL&P in serving large industrial customers.

Cyanamid submits that CL&P has in effect a nonjurisdictional rate schedule, Rate E.35, applicable to direct sales by CL&P to industrial and commercial customers in the State of Connecticut, and that, under this rate schedule, Cyanamid's cost for electric power would be considerably less than it would be compelled to pay the Town of Wallingford once the full impact of CL&P's rate schedule involved in this proceeding was passed along to American Cyanamid. Because the new CL&P rate schedule is designed to encourage the use by Wallingford of its own generating capability, the full cost impact of the new schedule must take into account the extra cost incurred by the Town in generating its own electricity. Cyanamid claims that based on 1971 test year consumption, its annual charges would be some $200,000 higher under the new CL&P rate schedule as compared with Rate E.35 direct customers irrespective of their recent rate increases. This allegedly results in Cyanamid's competitors receiving superior rate treatment simply because they happen to be direct customers of CL&P.

Cyanamid points out that it is not requesting that the FPC abdicate its jurisdiction to the Connecticut Public Utilities Commission. It merely asks that the FPC establish rates that are consistent with local rates. Cyanamid stresses that it is concerned with the rate design, not the rate level.

Cyanamid argues that the Commission has jurisdiction over the design of CL&P's jurisdictional rates and can take appropriate action to simplify that design. The proper grounds for such action is alleged to be the fact that the present design unfairly handicaps the Municipals in competing with CL&P for industrial business in the State of Connecticut.

Cyanamid argues convincingly that there is no valid reason why large industrial users of CL&P power in the State of Connecticut should be treated differently depending on whether they purchase directly from CL&P or indirectly through one of CL&P's six municipal customers.

Cyanamid cites Richmond Pow. & L., Richmond, Ind. v. Federal Power Commission, 481 F. 2d 490, 496 (D.C. Cir. 1973), where the electric power company had accorded Indiana municipalities precisely the same rate provisions as those set forth in its direct industrial tariff on file with the Public Service Commission of Indiana. Alternatively, Cyanamid asks that CL&P be required to make available to its wholesale customers a special industrial rate, comparable to E.35, which would in turn be made available by such customers to their own large industrial users. Cyanamid submits that this kind of pass-through arrangement has received express judicial approval in Missouri Edison Company v. Federal Power Commission, 479 F. 2d 1185 (D.C. Cir. 1973). This method would produce benefits

for all concerned in giving more adequate recognition to the special load characteristics of large industrial customers while ensuring an atmosphere of fairness and competitive equality in the industrial consumption of electric power within given geo- graphic areas.

American Cyanamid urges adoption of one of these two approaches, which will ". . . finally bring to an end the unlawful discriminatory treatment of CL&P's municipal customers and their users in the sale of electric power to industry in the State of Connecticut."

For the reasons given by Cyanamid the proposed CL&P rates are found discriminatory in design and unreasonable in level, and accordingly it is ordered hereby that a new design be developed which will remove such discrimination in accordance with the recommendations made by Cyanamid.

OTHER TARIFF MATTERS

Tax Adjustment Provision

Cyanamid argues that the proposed tax adjustment clause should be eliminated because the test year cost of service already includes full provision for taxes.

CL&P replies convincingly that the tax adjustment clause was designed to permit the Company to recover for any future sales, use, or gross receipts taxes on sales of the Company's energy to its municipal customers which might be imposed by the United States, by a state, or by other political entities with taxing jurisdiction over such deliveries.

It is concluded herein that the tax adjustment clause contained in the filed rate is reasonable and is hereby approved.

Fuel Adjustment Clause

The Staff and the Intervenors argue that the Company's pro- posed fuel adjustment clause is not consistent with the Commission's decision in New England Power Co., 48 FPC 899, (1972). Staff's and the Intervenors' claim that the proposed clause is based on "imputed" costs, and fails to properly evaluate the Company's situation with respect to economy interchange transactions.

The Company answers that while it would be unjust to impose a "phantom" cost which it has not incurred in serving its customers, the Commission's opinion in New England Power Co. was primarily intended to prevent transactions of that type. However, with respect to the Company's economy interchange transactions through NEPOOL (New England Power Pool) the Company is actually

charged, and must pay to the pool, the amount which it would have cost the Company to produce a like amount of power using the Company's facilities then available for service. This is not a "phantom" cost, but reflects the actual cost to the Company charged by NEPOOL for the interchange power which the Company receives.

The Company takes issue with the Staff's and the Intervenors' views about the New England Power Co. decision and its application to the Company's fuel adjustment clause and economy interchange transactions in which the Company participates through NEPOOL. The Commission in Docket R-479 would allow operation of fuel adjustment clauses to include payments incurred in economy interchange transactions. See Notice of Proposed Rulemaking on Wholesale Rate Schedules, Fuel Adjustment Clauses (Docket No. R-479), issued June 21, 1973, 38 F.R. 17253 (June 29, 1973). (Co. Br. 106.) To rule against the Company on this issue would ultimately discourage economy interchange transactions, and would be contrary to both the Commission's policies favoring power pooling and the crucial national policy of energy conservation. The Presiding Judge agrees

Interest on Overdue Balances

The Company proposes to charge interest of 1½% per month on the unpaid balance of bills not paid within 28 days. The Municipal Intervenors oppose this provision. They point out that the Company has never made a time lag study, but relied on random bills only. Intervenors state that there is no showing on this record to justify a late payment provision. The Company's Witness testified that the charge is appropriate because any delinquent payments form part of the Company's working capital requirements, financed with long-term capital rather than with short-term borrowings.

The Intervenors also claim that the Commission has never authorized the payment of interest beyond the going prime rate for refunds. However, it is noted that in City of Cleveland v. Cleveland Elect. Illum. Co., 49 FPC 118 (1973), the Commission approved a late payment charge of 5% on bills not paid within 45 days, and an additional 1% per month after 60 days until paid.

The Company submitted that late charge will never be collected if the customers pay their bills within the reasonable time allowed. Furthermore, if the most likely overdue period of payment is within the period of several months following billing, pursuant to the City of Cleveland opinion a late charge of 5% could be found reasonable whereas, under the Company's tariff the charge would only be 3% on such accounts.

The Presiding Judge concludes that while the proposed charge may be reasonable it cannot be approved herein, because the Company failed to submit and defend the very essential time lag study.

Disputes About Equipment

Municipals complain about portions of the proposed rate relating to required switching and protective equipment, installation of metering, and limitation of the Company's liability for any stoppages or interruptions of service. The Company has indicated its willingness to discuss implementation of this provision with any interested municipal customer. With respect to installation of metering, the Company does not object to the Municipals' suggestion that metering on the high voltage side of the customers' step-down transformers may be more appropriate in some situations. Finally, the Municipals complain that the rate's liability clause is a "one way street" and does not provide for a similar limitation of liability on the part of the customer. CL&P has again expressed no objection to the Intervenors' wish to be similarly free of liability in this manner.

It is hereby ordered that any dispute about the above relatively minor provisions be attempted to be settled through discussion between the Company and the interested wholesale customers. In the unlikely event that settlement fails, the Municipals may file a complaint with the Commission.

Rider A

Rider A provides for situations when a wholesale customer elects to participate in NEPOOL and to subject its own generation to NEPOOL dispatch, or to participate in a jointly owned generating unit either as an owner or a unit contract purchaser.

Under Rider A, the Company would supply service up to a specified contract demand, on a partial requirements basis, when a customer became a NEPOOL participant and took entitlements from sources outside the Company's system.

Municipals submit that the requirement of designation of contract demand for a continuous future seven-year period in base, intermediate and peaking blocks poses an economic barrier to participation. Conversely, under CL&P's rate, a municipal cannot participate in NEPOOL without being forced to become subject to Rider A. Municipals say that because NEPOOL membership obligations are not clear they have refrained from seeking membership. For example, NEPOOL unit power can be wheeled, but the agreement does not provide for the transmission of firm power which the municipals having insufficient generation would require, therefore the municipals would have to negotiate wheeling agreements which private utilities have been reluctant to provide.

Staff takes the position that Rider A is premature and shoul be rejected because: (1) the resale customers have not expressed firm intention to join NEPOOL, and (2) Rider A contemplates diff levels of partial requirements service at rates which have not be cost supported by the Company. It is found necessary to agree wi Staff on the above two determinative points, and accordingly, Rid is hereby ordered stricken for the tariff as premature. In the e that the generating municipalities do elect to join NEPOOL at som future time, which would have the effect of changing the characte their partial requirements service from the Company, it would be appropriate for the Company to submit for filing, at that time, th rates, terms and conditions of service and supporting cost data.

Rider B

Rider B provides a means for a wholesale customer with peakin capacity, and not a member of NEPOOL, to coordinate the operation of its generating facilities with the operation of the Company's system, and by so doing both to contribute and to receive reserve and backup service. There is evidence in the record that arrangements under Rider B are not very different from those that have previously been employed effectively in regard to the generating facilities of Norwalk II, Norwich, and Wallingford. Under Rider B a customer would agree to permit its units to be dispatched and would receive in return a firm rating equivalent to its Net Contin Output Capability times 80%.

Municipals seem primarily concerned with the payment terms between the parties when more or less generation is dispatched fro the customer's units than would be required to meet the customer's Energy Obligation.

Municipals complain that in essence ". . . Rider B requires a Municipal generator to abdicate all control and proper incidents of ownership over its generating plant to the restrictive onerous dictates of the Company." The Municipals do not dispute the advantages to a wholesale customer under Rider B, but primarily contend that the provisions of Rider B are overly complex. However witness Shultheis provided for the record an adequate explanation of the operation of Rider B. Since this is an entirely optional and harmless provision there appears no valid reason for striking i from the newly proposed tariff.

Cancellation Provision

Municipals object to the proposed seven-year term provision as locking the present wholesale customer". . . on a continuous rolling basis thus barring them from obtaining power from sources other than CL&P, except within the restrictive and unfair confines of the Company's tariff." Company demonstrated that the Intervenors are incorrect in their assumption that the general term of the tariff agreement overrides any of the shorter provisions for

determining demand expressly specified in the tariff. The practical effect of the seven-year term of agreement is to provide notice to the Company of changes in load and to provide some minimal protection for the Company's investment through the minimum bill mechanism.

Accordingly, the seven-year cancellation provision proposed in the tariff is hereby approved.

ULTIMATE FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the briefs filed herein, it is further found and concluded that:

(1) The Connecticut Light and Power Company is a public utility under the Federal Power Act.

(2) The proposed increases in rates and the changes in tariff provisions, as set forth in the rate schedules and tariff provisions at issue herein, involve sales for resale and are subject to the jurisdiction of the Commission.

(3) The increases in rates and changes in tariffs proposed by The Connecticut Light and Power Company in Docket No. E-7743 have not been shown to be just and reasonable; and that a just and reasonable increase in rates and changes in tariff are and will be those which are in conformity with the views, findings and conclusions set forth in the decision herein.

ORDER

WHEREFORE, It Is Ordered, subject to review by the Commission on appeal or on its own motion, as provided by the Commission's Rules of Practice and Procedure, that:

(A) Within 45 days from the issuance of this decision, The Connecticut Light and Power Company shall file, in a form satisfactory to the Commission, a new cost of service and revised tariff sheets, in accordance with the findings and conclusions of this decision and with the Commission's rules and regulations.

(B) The Connecticut Light and Power Company shall refund to its customers all amounts collected in excess of those which would have been payable under the revised rates and changes in tariffs ordered above, together with interest from the date of payment to the date of refund, in accordance with the Commission's rules and regulations.

Allen C. Lande

Allen C. Lande
Presiding Administrative Law Judge

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

The Connecticut Light and Power Company) Docket No. E-8952

NOTICE OF RATE SCHEDULE CHANGES

(August 9, 1974)

Take notice that The Connecticut Light and Power Company (CL&P) on August 2, 1974, tendered for filing proposed changes in its rate schedule designated FPC Rate 1. The proposed changes would, effective September 1, 1974, increase revenues from jurisdictional sales and service by $1,084,000 based on the 12 month period ending December 31, 1974. In addition, CL&P proposes to make modifications in the rate form, fuel adjustment clause formula and certain other provisions relating to service to its wholesale customers.

Applicant states that the increased rates are proposed in order to provide CL&P with increased revenues in order to permit it to earn a higher return upon its property devoted to service of its wholesale customers. CL&P cites, inter alia, increased taxes, high interest rates and rising labor and material costs in support of this rate increase.

Copies of the filing were served upon CL&P's jurisdictional customers and the State of Connecticut Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 23, 1974. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb
Secretary

DC-13

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

The Connecticut Light & Power Company	: :	Docket No. E-8952

PROTEST, PETITION TO INTERVENE AND REQUEST FOR A PHASED PROCEEDING OF THE CONNECTICUT MUNICIPAL GROUP

The Connecticut Municipal Group 1/ ("Cities") composed of municipal corporations organized and existing under the laws of the State of Connecticut which purchase electric power from the Connecticut Light & Power Company ("CL&P" or "Company") under its wholesale electric rate schedule R-1 currently on file with this Commission hereby: (1) protests the proposed R-2 rate schedule filed by CL&P on August 2, 1974 as being unjust, unreasonable and unduly discriminatory and therefore in violation of Section 205 of the Federal Power Act; and move that the Commission (2) suspend the effectiveness of the R-2 filing for the full five-month statutory period; (3) initiate a phased hearing process, separating out the issue of rate design for expedited treatment; and (4) grant the petition of Cities to intervene in these proceedings.

All communications relating to the above-referenced docket should be directed to:

William W. Clinton, President
Connecticut Municipal Electric
and Gas Association
c/o Department of Public Utilities
295 Meridian Street
Groton, Connecticut 06340

Charles F. Wheatley, Jr.
Grace Powers Monaco
Wheatley & Miller
1112 Watergate Office Building
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

1/ The City of Groton; Borough of Jewett City; Second Taxing District, City of Norwalk; Third Taxing District, City of Norwalk; City of Norwich; Town of Wallingford and the Connecticut Municipal Electric and Gas Association.

I. CL&P THROUGH ITS R-2 FILING FOR THE SECOND TIME IN LESS THAN TWO YEARS SEEKS TO SUBSTANTIALLY CHANGE THE METHOD OF OPERATION OF CITIES' ELECTRIC SYSTEMS, -- THIS OBJECTIVE REQUIRES THAT THE COMMISSION PHASE THE R-2 PROCEEDING TO EXPEDITE FINAL RESOLUTION OF THE PROPER RATE DESIGN FOR WHOLESALE SERVICE

The Company by its R-1 filing, which became effective on January 3, 1973, sought to impose upon the Cities an entirely new method of operating their systems. By that filing, the Company departed from the simple demand/energy blocked rate structure and sought approval for energy block stratified rate with no specific demand charge; required the Cities to operate their peaking generation facilities uneconomically on a 12-month basis; calculated Cities' payment obligations on a total system demand from whatever source basis instead of the obligations imposed by Cities upon CL&P and imposed a 97 per cent leading, 95 per cent lagging power factor judged on a Kvar basis.

On July 29, 1974, Administrative Law Judge Lande issued his Initial Decision on the R-1 filing (Docket No. E-7743) and rejected most of the rate design provisions that the Cities had objected to. On August 2, 1974, CL&P filed this R-2 rate schedule which eliminates some of the features of the R-1 tariff, adds new provisions, modifies other provisions and again seeks to change the modus operandi of the Cities' systems.

The wide-ranging departures from standard utility procedures and from the established service patterns and relationships between CL&P and the Cities proposed in the vagaries and shifts in the rate design proposed by CL&P in its R-1 rate filing has made it difficult for the Cities to adjust their operational procedures to conform to that schedule. Twenty months after the effective date of that tariff, the Company and the Cities have still be unable to resolve basic questions as to the definition of terms and conditions, particularly with respect to billing demand resulting from the indefinite, ambiguous and complex construction of the R-1 rate. The R-2 rate filing may employ a somewhat different rate design, but the nature of that design continues the problematic rate design trouble plagueing the Cities. Although the R-2 rate design is presented in a somewhat different format from the R-1 rate filing, the overall effect of the R-2 rate design is to perpetuate the Cities' problems attributed to the R-1 rate design. Specifically, it effectively prevents the Cities from competing with CL&P for industrial sales and it prevents the Cities from seeking out new sources of power on any sort

of reasonable basis. This latter effect of the R-1 rate which is carried over into the R-2 rate had its most recent example of adverse impact on the Town of Wallingford by making it uneconomic for Wallingford to take advantage of a long-term, relatively low-cost fuel source for its generation from a state trash conversion project which would require Wallingford to operate its generators on a more or less continual basis.

It is in the interest of both CL&P and its customers to reach a swift and final resolution of the issue of the rate design applicable to CL&P's wholesale service. For this reason, the Cities move that the Commission sever the rate design issues in the R-2 filing from the other aspects of the proposed tariff and set it for expedited hearings with elimination of the intermediate decision process.

II. THE PROPOSED RATE SCHEDULE CHANGES ARE UNJUST UNREASONABLE AND UNDULY DISCRIMINATORY.

The rate increase sought by CL&P is clearly excessive and is based upon a cost of service filing by the Company which, on its face, reveals treatment of a number of issues in a manner clearly contrary to judicial and Commission precedents under the Federal Power Act, the most recent of which is the Initial Decision of Judge Lande in the CL&P R-1 rate filing proceeding (Docket E-7743). Some of the more obvious area of improper treatment are as follows:

A. Rate of Return.

CL&P's request in the R-2 filing for a 9.16 percent overall rate of return with a claimed 14 percent return on common equity, based on 1974 projected data, is patently unreasonable and considerable in excess of returns permitted by the Commission to utilities with comparable equity/capital ratios in rate proceedings. The excessive nature of the Company's request is placed in sharp relief by the Decision of Judge Lande in the R-1 rate filing on July 29, 1974. Judge Lande, after a hearing that concluded in mid-December of 1973, rejected as excessive and unwarranted the Company's request for an 8.6 percent rate of return overall with a 13.5 percent allowance on equity 1/ and approved an 8 percent rate of return with

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1/ In this context on actual 1973 data, the Company indicates that the new rate will provide an 8.96 percent rate of return with a 14 percent return on equity (Reis, Sch. 29).

an 11.47 percent return on common equity. CL&P has not come forth with a presentation substantially different from the presentation made in the R-1 rate proceeding to justify a further rate increase.

Further, it appears that any decline in the earnings of CL&P during 1973 were caused primarily by non-rate factors, notable among these factors, the unusual and extended outage of its Millstone No. 1 Unit and the increased cost of energy occassioned thereby as well as the results of ice storm Doria. As will be developed under the operating expense segment of this Petition, _infra_, these expenses should not be borne by the rate payer.

B. Rate Base.

1. Organizational expense.

The Company's (Statement C at pp. 2,5) includes the unamortized balance of its organizational expense in its rate base. Elimination of this balance was argued by Staff and Cities in the R-1 rate filing and this balance was eliminated by Judge Lande in his Initial Decision in that proceeding (Mimeo at p.9). Thus, CL&P's rate base is overstated by the inclusion of these unwarranted amounts, namely, $420,880 in 1973 and $348,000 in the 1974.

2. Average beginning and year-end balances.

CL&P has vastly overstated its rate base for the actual and projected test period through the use of the average of a beginning-end year figure. This is contrary to Commission precedent which adheres to the average 13 month figure. See _Union Electric Company_, 47 F.P.C. 151,176(1973). Judge Lande in his Decision in the R-1 proceeding follows this precedent and refused to adopt the Company's method of determining rate base, but rather adopted the 13-month average basis (Mimeo at pp.8-9).

C. Cost of Service.

1. Expense items.

(a) Unusual operating expenses.

The Company includes as expense items in its cost of service, the amortization of unusual operating expenses relating to the Millstone outage and ice storm Doria. In 1973, this treatment amounts to $8,508,000 for Millstone and $4,099,000 for the ice storm and in 1974 it amounts

to $6,381,000 for Millstone and $2,683,000 for the ice storm. None of the expenses relating to either Millstone or to ice storm Doria should be charged to the ratepayers. It is not a function of the rate payer to bear the risks of a corporate venture which the Company has ample opportunity to protect its shareholders against, for example, via adequate contractual or insurance coverage.

With respect to Millstone, the high replacement power costs occassioned by the Millstone malfunction, which CL&P seeks to include in part as an operating expense, were due to malfunctions in design and equipment which were layed out in detail on the record in the R-1 proceeding (T. 930-951). The recourse of the Company is not to seek to recoup those costs in a rate proceeding, but rather to seek to be made whole through legal action against the designor and the manufacturer of the defective unit. CL&P sought to resolve its differences with General Electric by way of an informal settlement process. The settlement reached as a result of this process did not cover any replacement power damages but was restricted to malfunctioning in plant and materials supplied by General Electric.

By way of contrast, the Detroit Edison Company has filed a $59,000,000 damage suit in State Court in Michigan against the Westinghouse Electric Corporation charging Westinghouse with negligence in the manufacture of two giant fossil turbine generators. The damages sought by Detroit Edison cover both repair costs and the cost incidental to the breakdown, including the purchase of replacement power. See Moody's Public Utility Newsletter, March 15, 1971. Also, last May, the Union Electric Company filed suit in the United States District Court for the eastern district of Missouri against Westinghouse seeking to recover damages of $16 and one half million resulting from the failure of generators at its Labadie Power Plant. See Moody's Public Utility Newsletter, May 25, 1973 at p.1483. Union Electric seeks $15 and a half million out of the $16 and a half million total as "reimbursement for abnormal costs" incurred while the plant was inoperative, including replacement of the lost electric generation by purchasing higher priced power from other sources and by using its higher cost generating units. Finally, with respect to the Consumer's Power Company, a Commissioner of the Michigan State Public Service Commission has indicated that the State Commission is opposed to rate increases being awarded every time something goes wrong with the utilities plant construction or operation:

"He said the problems consumers [power company] is having with Palasaides--the plant has been down for months with steam generator and fuel core support-barrel trouble--will cost the utility at least $18,000,000. These sort of excess costs should not be passed on to consumers in the form of rate increases."

See Nucleonics Week, January 24, 1974, Volume 15, No. 4, McGraw Hill at p. 6. The Michigan Commission has asked Consumer's Power Company, as a condition of its recent rate increase request, to report by May 1, on what legal steps it is taking to obtain recompense from Co[illegible] Engineering which supplied Palasaides' steam sup[illegible]m and any other equipment supplier. Id.

CL&P's rate payers should not be penalized by the failure of the Company to vigorously pursue steps to recover its legitimate damages arising from the Millstone Unit malfunction.

With respect to ice storm Doria, the Company should not be permitted to recover expenses related to an event which it was within the power of the Company to protect itself from loss from via adequate insurance coverage.

(b) Payments under the Northeast Utilities System generation and transmission agreement.

The Company in this proceeding, as in its R-1 proceeding, includes in its expense items capacity cost expense equalizing payments to or from other members of the Northeast Utilities System. It is the position of Cities that unless and until the Northeast System initiates a rate proceeding based on a system-wide cost of service, the expense items charged by CL&P must reflect its operating conditions on an individual basis. For example, in Judge Lande's Decision in the R-1 rate proceeding, he completely rejected the transitional payment by CL&P flowing from the Northeast Utilities generation and transmission agreement, but split the difference on the capacity cost treatment. Thus, CL&P's capacity cost on an individual operating basis was 59 cents before applying the agreement and 61 cents after the agreement, and that Judge Lande set them at the system-average of 60 cents. (Mimeo at pp.13-14).

D. Rate Design.

1. Stratified rate.

The Company proposes a stratified rate with a block

designed to reflect the cost of supplying peaking power and another block to reflect the cost of intermediate and base energy. This procedure, as recognized by Judge Lande in his Initial Decision, does not and cannot reflect the actual operational facts and costs incurred on the CL&P system:

> "The Staff contends that the Company's analysis of the pattern of operation of the Northeast Utilities System assumes that it is possible to identify loads with particular sources. Such identification cannot be done properly on an integrated system, especially with the further complication of having inter-system purchases and sales."(mimeo at p.17).

2. Northeast System data.

CL&P improperly relies on Northeast System load duration curve and cost patterns as a model for its rate design. Use of Northeast System data is inappropriate unless the Northeast System is undertaking to embark on a policy of setting all rates on a uniform system-wide cost of service basis. Further, CL&P claims that it load curve patterns comport with Northeast System pattern and also are substantially similar to the Municipal's patterns. This allegation is incorrect especially with the larger of the Cities' system, -- Wallingford and Groton.

3. Restrictions on end use.

The proposed tariff contains improper restriction on the end-use of power by the Municipal customers (Original Sheet No. 8, Section 1, contrary to the Commission's decisions in the Mississippi Power Company (45 F.P.C. 269 (1971)) and the Georgia Power Company 35 F.P.C. 435 (1966) proceedings. These restrictions on the end-use of power which penalizes the Cities for efficient and economical utilization of their resources are both anti-competitive and discriminatory.

4. Indefinite tariff provisions.

The proposed tariffs billing demand provisions is indefinite in that it provides that the initial billing demand amount shall not be less than would have resulted from the "reasonable operation" of the generating systems facilities during the preceding 12-month period (Original Sheets 8-9, Section 3(b)). No definition of terms or frame of reference is given against which the meaning of the term "reasonable operation" can be judged.

Some 20 months after the effective date of the R-1 filing, the Company and the Cities as a result of indefinite tariff provisions are still arguing over what constitutes the Cities billing demand. To alleviate this problem, the Cities request that in its order dealing with Cities' protest and setting the proceeding for hearing, the Commission provide that "billing demand" will be determined from the Cities' demands upon CL&P starting from the effective date of the new rate.

5. Power factor.

The proposed tariff (Original Sheet No. 11, Section 4 (c)) sets unusually high power factor limits of 97 percent lagging and 95 percent leading. Judge Lande in the R-1 proceeding, eliminated the leading power factor charge as inappropriate and reduced the lagging factor to 90 percent which comports with prior Company-municipal practice. However, even this factor may be discriminatory in that the Company permits its large industrial customers to maintain an 85 percent power factor without penalty.

6. Facilities charge.

The facilities charge is improper in that it provides an exorbitant return on relatively minor expenditures on the part of the Company (Original Sheet 12-13, Section 4(e)).

7. Late charge.

The Company's deficiency in this proceeding corresponds with its deficiencies in the R-1 proceeding, namely, it fails to provide a time-lag study to support its late charge provision and thus this provision must be rejected. See Initial Decision of Judge Lande at p. 22.

However, if the Commission determines that this provision should not be rejected, the Cities request that the Commission in accordance with established precedents and to alleviate continuation of friction and billing disputes generated by this clause in the R-1 tariff, make the following changes in the late charge provision and include them in the order dealing with Cities' protest and setting the proceeding for hearing: (1) reduce the 18 percent provided to the same rate that the Commission orders applicable to refund; (2) make it clear to the Company that it is contrary to Commission precedents to collect compound interest and that therefore the charge can only embrace simply interest and (3) make it clear to the Company that the interest would accrue from the date the bill is due, not as the Company has interpreted it, from the date the bill is rendered. Under the Com-

pany's interpretation of this provision, if a bill is due on the 28th of a month, was rendered on the first of that month, and is paid on the 29th of that month, the Cities would have to pay 28 days interest.

8. Riders A and B.

The proposed Riders are exceedingly complicated in structure and discriminatory in scope. The proposed tariff discriminates against the Municipals in that it commits the Company to wheel power from one wholesale customer to another only if the municipal wholesaler agrees to take service under Riders A or B of the proposed tariff and thus subject its generation to the control of the Company without guarantee of adequate generation credit. Riders A and B further discriminate in that they utilize a total system-demand and end-use criteria to determine billing demand, this inflates the cost of CL&P power and by indirection the cost of power from other sources to the Municipals and thus reduces their ability to reduce their dependency upoon CL&P.

9. Limitation of liability.

CL&P's proposed terms and conditions, Section 9, Original Sheet No. 16 provides that:

> "The Company shall endeavor to provide the buyer adequate and reliable electric service pursuant to this rate schedule, but in no event shall either party be liable for losses or damages of any kind resulting from any stoppage, interruption to, or variation or diminution in the supply of electric power."

This attempt by the Company to limit its liability is objectionable in the following particulars: (1) the Commission lacks authority either to establish or limit liability of an electric utility for service interruptions or voltage reductions since that is a matter properly controlled by state law; and (2) even if the Commission did possess authority to establish limits on a public utilities liability and some such limitation was deemed appropriate, it should be promulgated as a uniform national policy applicable to all electric utilities subject to the Commission's jurisdiction through a rule-making procedure.

10. <u>Fuel clause</u>.

The proposed Fuel Adjustment Clause in a number of areas is not in accord with estalished Commission precedent. For example, it incorporates a base fuel cost keyed to 1973 experience when 1974 is the applicable test period under the Commission's new regulations, and the Fuel Clause is over-inflated in that it does not reflect NEPOOL savings.

III. THE FULL FIVE-MONTH SUSPENSION PROVIDED FOR BY THE FEDERAL POWER ACT IS REQUIRED UNDER THE CIRCUMSTANCES OF THIS CASE.

A. <u>Irreparable Injury To The Cities</u>.

The Company files this R-2 rate schedule less than eight months after the R-1 rate became effective subject to refunds. Unless the rate is suspended for the full statutory period, the Cities will have to bear the loss in revenues accruing between the date that the R-2 rate becomes effective and the earliest date at which the Cities will be able to redesign their rate structures and make them effective, -- a period of at least three months for the larger systems with personnel on hand able to redesign rates and five months for the smaller systems which must bring in outside personnel to evaluate and redesign their rates. Thus, without suspension for the full statutory period, the Cities will suffer irreparable injury. By way of contrast, the Company has asked for an effective date of 30 days from filing for the proposed rate schedule and has not asked for a shorter suspension period, CL&P therefore has neither claimed nor shown irreparable injury if less than the full five-months' suspension period is granted. Indeed, given the insignificant changes in the data base supporting the R-2 filing, in contrast with the R-1 filing, it is evident that CL&P which is presently collecting subject to refund, on a greatly inflated rate base, .6 percent more than the rate of return permitted the Company by Judge Lande's Initial Decision in the R-1 proceeding, will suffer no adverse effects from suspension for the full statutory period.

B. <u>Commission Is Required To Conform To the Intent Of Congress And Its Long-Standing Administrative Practice and Suspend The Proposed Rate Increase For the Full Statutory Period</u>.

The Congressional intent underlying the enactment of Section 205(e) of the Federal Power Act and the long-standing practice of the Commission complementary to

that intent requires the suspension of the proposed rate increase for the full five-month statutory period. 1/

Congress in setting the maximum suspension period undertook to balance the need of the great applicant against the needs of the consuming public and through its deliberations arrived at a period which does not unduly burden a utility whose rate increase may later be determined justified (but who cannot recoup its rate loss during the suspension period) while at the same time protecting the public interest by permitting, and indeed intending, that the Commission make use of the optimum suspension period to assure that the lawfulness of the proposed change is determined completely or substantially before the change becomes effective. See Hearings on H.R. 5423 Before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess., Part I at page 385 (1935).

The reasonableness of this suspension period arrived at was acknowledged in the Hope case. Hope Natural Gas Company v. F.P.C., 196 F.2nd 803 (4th Cir. 1952). In that case, the United States Court of Appeals for the Fourth Circuit held that even where it is later determined that a part of a proposed increase is justified, the suspension power and period is a reasonable one. The Court said:

> "It is true, of course, that a utility is entitled to rates that are just and reasonable; but that is not to say that rates must fluctuate automatically with every change in economic conditions or that a reasonable time may not be allowed for determining the reasonableness of a proposed increase in rates before it is allowed to go into effect. Any loss sustained by a maintenance of the status

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1/ The suspension provisions of the Federal Power Act, the Natural Gas Act, the Federal Communications Act and the Civil Aeronautics Act are all patterned after and supported by the same legislative rationale as the suspension provision of the Interstate Commerce Act. The concern of Congress with respect to the Interstate Commerce Act, after ascertaining that it had set a period of suspension which was not confiscatory, was that the period be sufficient for and utilized by the subject Commission to finally or substantially determine the lawfulness of a rate before visiting it on the public. See Hope Natural Gas Company v. F.P.C., 196 F.2nd 803, 806-07 (4th Cir. 1952); Hearings on H.R. 5423, House Committee on Interstate and Foreign Commerce, 74th Cong., 2nd Sess. 284-400 (Statement of F.P.C. Commissioner Seavey and page 2170(Statement of Mr. Dozier DeVane); S.Report No. 355, 61st Cong. 2nd Sess., Part I at pp.8-9(1910).

quo while such determination is being made is properly considered, not as a violation of constitutional rights, but as a necessary incident of rate regulations so long as the period of suspension does not 'overpass the bounds of reason.'" 196 F.2nd at p.809. 1/

The Commission articulated its rationale in accord with the reasoning in the Hope case, with respect to the application of the suspension period of the parallel Natural Gas Act, in Yucca Petroleum Company, 29 F.P.C. 211, 212 (1963):

"In our view, a lesser suspension period than the five-month suspension period permitted under Section 4(e) of t Natural Gas Act should not be authorized except in those instances when strong equitable considerations dictate that a shortened suspension period is warranted."

It is a matter of fact that the Commission's experience indicates that the five-months' suspension period has, with the increase in filings by companies over the years, for some time been inadequate to complete the necessary investigation of the lawfulness of the proposed filing. These circumstances make suspension for the full statutory period a virtual necessity if the Congressional intent--complete or substantial determination of a rate prior to its operation-- is to be achieved. This is particuarly important in this proceeding in which resolution of the rate design issue is possible prior to the expiration of the five-months' suspension period and also because suspension for the full statutory period will permit the

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1/ See also the dissenting opinion by Commissioner Carver in the Boston Edison Company proceeding, Docket No. E-7400, Order of April 29, 1970, in which Commissioner Carver recognized the inability of the municipal distribution system to absorb substantial rate increases on short notice: "the impact of an unanticipated cost increase will fall mostly heavily on municipal distribution systems. By the very nature of their operations, such entities maintain narrower financial reserves and have less flexibility to change retail rate structures on short notice."

Cities to have time to plan properly for and implement the increase in its own rates as a result of the filing in a manner which will avoid debilitating financial losses.

WHEREFORE, for the foregoing reasons, the Cities request that the Commission suspend the proposed rate for the full five-month statutory period, set the proceeding for a full hearing, permit intervention by the Cities and separate the rate design issues from the body of the proceeding relating to the R-2 tariff for separate and expedited treatment.

Respectfully submitted,

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August 23, 1974

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
Albert B. Brooke, Jr., Rush Moody, Jr.,
William L. Springer, and Don S. Smith.

The Connecticut Light and Power Company) Docket No. E-8952

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED RATE INCREASE AND ESTABLISHING PROCEDURES

(Issued August 30, 1974)

On August 2, 1974, the Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate increase 1/ for electric service to Bozrah Light and Power Company and six municipalities. 2/ CL&P contends that the proposed increase results in an estimated increase of $1,084,000 for the period ending December 31, 1974, and a realized rate of return of 5.61%. The proposed effective date is September 1, 1974.

In support of CL&P's proposed rate increase, CL&P states that the increased rates are proposed to provide it with increased revenues in order to permit it to earn a higher return upon its property devoted to service of its wholesale customers. CL&P cites, inter alia, increased taxes, high interest rates and rising labor and material costs in support of this rate increase.

Notice of CL&P's filing was issued on August 9, 1974, with comments, protests, or petitions to intervene due on or before

1/ Connecticut Light and Power Company, FPC Electric Tariff, Resale Service Rate Schedules R-2, Original Sheets No. 1 through 36.

2/ Cities of Norwich, Norwalk - Second Taxing District, Norwalk Third Taxing District and Groton, Connecticut, the Borough of Jewett City, Connecticut and the Town of Wallingford, Connecticut.

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August 23, 1974. On August 23, 1974, a petition to intervene was filed by the Connecticut Municipal Group 3/ (Municipal). The petition requests that the proposed increase be suspended for the full statutory period and a phased hearing process be initiated, separating out the issue of rate design for expedited treatment. We shall permit these petitioners to intervene, however we believe that a phased hearing process would lead to an unnecessary delay in the final determination of this proceeding.

Our review of CL&P's filing and the issues raised therein indicates that the proposed changes have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful. Accordingly, we shall suspend the proposed changes for one day and establish hearing procedures to determine the justness and reasonableness of CL&P's filing.

We note that CL&P's proposed fuel adjustment clause imputes the Company's own fuel cost variations to its purchased energy, and thus is subject to suspension since it may result in rates that are not just and reasonable. Accordingly, we shall provide for the filing of a fuel adjustment clause which conforms to Opinion No. 633. The suspension of the fuel clause will be lifted upon receipt of a filing in satisfactory compliance with Opinion No. 633.

<u>The Commission finds</u>:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in CL&P's revised rate schedule proposed in this docket and that the tendered rate schedules be suspended as hereinafter provided.

3/ Cities of Norwich, Norwalk - Second Taxing District, Norwalk Third Taxing District and Groton, Connecticut, the Borough of Jewett City, Connecticut and the Town of Wallingford, Connecticut and the Connecticut Municipal Electric and Gas Association.

The Commission orders:

(A) Pending a hearing and a decision thereon, CL&P's proposed changes in its rates and charges, tendered on August 2, 1974, are accepted for filing, and suspended for one day the use thereof deferred until September 2, 1974. subject to refund.

(B) On or before December 17, 1974, the Commission Staff shall serve its prepared testimony and exhibits. Any intervenor evidence will be filed on or before December 31, 1974. Any rebuttal evidence by company shall be served on or before January 14, 1975.

(C) CL&P shall file within 30 days a fuel adjustment clause which conforms to Opinion No. 633.

(D) Municipal's request for a phased hearing is denied.

(E) Pursuant to the authority of the Federal Power Act, particularly Section 205 thereof, and the Commission's Rules and Regulations (18 CFR, Chapter I), a hearing for purposes of cross-examination concerning the lawfulness and reasonableness of the rates and charges in CL&P's FPC Rate Schedule, as proposed to be amended herein shall be held commencing on January 28, 1975, at 10:00 A.M., EDT, in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose, (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in Section 2.59 of the Commission's Rules of Practice and Procedure.

(G) The above mentioned petitioners are hereby permitted to intervene in this proceeding, subject to the Rules and Regulations of the Commission; Provided, however, that the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in the respective petitions to intervene; and Provided, further, that the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(H) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure.

(I) The Secretary shall cause prompt publication of this order in the Federal Register.

By the Commission. Commissioner Smith, dissenting, would suspend the effectiveness of the rate increase for five months and thus dissents to this order.

(S E A L)

Kenneth F. Plumb,
Secretary.

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

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FEDERAL POWER COMMISSION

In the Matter of:
Connecticut Light & Power Company : Docket No. E-8952

PETITION FOR EMERGENCY STAY PENDING REHEARING AND PETITION FOR REHEARING BY THE CONNECTICUT MUNICIPAL GROUP

Pursuant to Section 1.7 and 1.34 of the Commission's Rules of Practice and Procedure, the Connecticut Municipal Group ("Municipals") hereby petition the Commission for an emergency stay pending rehearing and for rehearing of its Order of August 30, 1974, which accepted the Connecticut Light & Power Company's ("CL&P" or "Company") proposed R-2 rate filing, suspended it for only one day, suspended the proposed fuel adjustment clause pending revision, and refused to phase the proceeding to permit expedited decision of the rate design issues.

In support thereof, the Municipals state as follows:

A. The Commission's Grant of Only a One Day Suspension Was Based on an Erroneous Finding as to the Rate of Return Which CL&P Would Earn Under the R-2 Rate.

In connection with its decision to suspend the proposed R-2 rate for only one day, the Commission recited that the "proposed increase results in an estimated increase of $1,084,000 for the period ending December 31, 1974, and a realized rate of return of 5.61%" (Mimeo at p. 1, emphasis added). This is an erroneous understatement of the realized rate of return averred by CL&P in its filing:

> "The proposed new rates are designed to increase electric revenues by $1,084,000 or 5.46% which will produce a rate of return of 9.16% on the average net investment allocable to these wholesale customers for the calendar year 1974 test period." (Grove testimony, Part I, page 5. See also Statement G, p. 1. Emphasis added.)

Indeed, to buttress the magnitude of the error made by the Commission, the Municipals also point to the acknowledgement of the Company at page 5 of Mr. Wing's testimony that the overall rate of return on the present

R-1 rates generated by the wholesale customers during Period II which is the calendar 1974 test period is anticipated to be 7.13%, based on the Company's figures.

In fact, the Company has carried forward into its R-2 rate filing many of the cost of service determinations held erroneous by Presiding Judge Lande in his Initial Decision of July 29, 1974 in Docket E-7743 regarding the Company's R-1 rate. Based on these errors, it is crystal clear that the overall rate of return in fact being sought by CL&P in this case is greatly in excess of the claimed 9.16%.

In marked contrast, is the Order of the Commission of August 14, 1972 in response to the filing of the R-1 rate which requested an 8.6% rate of return which purported to yield a $1,228,169 increase for the Municipals. In that order the Commission suspended the proposed rate for the full five-month statutory period. In the R-2 proposal which the Commission suspends for only one day, the Company seeks a 9.16% overall rate of return which is not only grossly in excess of anything which the Commission has permitted to companies with similar capital structures, but also grossly in excess of the 8% rate of return approved for the Company by Judge Lande in his Initial Decision of July 29, 1974 in the R-1 rate case, Docket E-7743.

Further, in its order of July 12, 1974 in Boston Edison Company, FPC Docket E-8855, the Commission granted a full five-month suspension where the Company new rates would yield a claimed 9.9%. Clearly had the Commission not been mistaken as to the rate of return claimed by CL&P in this docket, a similar five-month suspension would have been granted here, assuming equal regulatory treatment.

It was established on the record in the R-1 proceeding (Docket E-7743) that the real impact of the proposed new rate was nearly three times as high as the asserted $1,228,169, 14.9% increase and that CL&P knew this prior to its filing. Exhibit 66 from that proceeding shows that the increase in revenues to the Company from its billings under the new rate after it became effective January 16, 1973, for the six months' period January through July, 1973, was approximately $1,500,000 and Mr. Grove conceded that for the full year it would approximate $3,000,000 (Grove T[illegible] 1279-1283). Mr. Grove, the Company's chief financial officer responsible for the rates to Northeast Utilities Company, reported to President L. F. Sillin, Jr. on April 19, 1972, two months before the filing, that "[o]ur preliminary figures indicate that the total amount of the increase will be

about $3 million, with increases ranging from 33 percent for Norwich to 50 percent for Wallingford" (Exhibit No. 69; Grove, Tr. 1279-83). 1/

It is apparent that the Commission in reaching its determination to suspend for only one day, believed that the filing would produce only a 5.61% realized rate of return. In view of this error, and the errors noted in following arguments, the Municipals submit that the Commission should modify its order to provide for full suspension of the R-2 rate and pending such modification on rehearing, should stay the operation of its Order of August 30. 2/

B. The Suspension of the Illegally Based Fuel Clause Permits the Old R-1 Fuel Clause to Operate in Conjunction With the Proposed R-2 Rate to Produce Illegally Excessive Revenues for CL&P.

The Commission's Order of August 30, 1974 suspended the operation of the R-2 fuel clause until revised by the Company to comply with Opinion 633. This was proper, but a major problem arises from the fact that the R-2 rate was suspended for only one day. This results in the fuel charges being made under the old R-1 rate coupled with the new rates in the R-2 rate schedule producing a rate for the Municipals greatly in excess of the total R-2 increase and an illegal double charge for fuel to the Municipalities.

1/ Staff also agrees that the Company in the R-1 rate proceeding did not properly represent the impact of that increase on the Municipals:

"The Company claims that their proposed annual increase in jurisdictional revenues amounts to approximately $1,228,169, and the Presiding Judge cites this figure in his Initial Decision, p. 1). However, this is not the most meaningful representation of the impact of the Company's proposed increase, because the revenues collected from the resale customers under the prior rates are based on sales levels different from those anticipated under the proposed rates (Exh. 8). The proper assessment of the impact of the Company's proposed rate increase should be based on Exh. 78, which shows present and proposed overall revenues from resale of electricity of about $7,491,000 and $9,469,000 respectively, for a total overall rate increase of about $1,978,000 (26%) for the test year 1971."(Staff Br. on Exceptions at pp.2-3).

2/ See Municipal Light Boards of Reading & Wakefield, Mass. v. FPC, 450 F.2d 134, 1352 (D.C. Cir. 1971). One of the possible exceptions to the discretionary nature of the FPC's determination of the propriety of a suspension is when the action taken or declined "reflects an error evident on the face of the papers."

Under the fossil fuel clause adjustment of CL&P's R-1 Rate Schedule (Original Sheet No. 11), the base cost of fossil fuel energy is given as .647 cents per Kwh 3/. The base cost under R-2 (Original Sheet No. 11) has been increased to .905 cents per Kwh. Obviously, a portion of the base cost of fossil energy under Schedule R-1, .258 cents per Kwh, has been absorbed into the R-2 base rate, leaving a smaller portion of fossil energy charges to be recouped in the R-2 fuel adjustment clause. Hence, use of the R-1 fuel clause with the R-2 base rate during the period of R-2 fuel clause suspension would result in a double collection of a portion of the fossil energy charges associated with Municipal energy purchases.

This overcharge may be demonstrated by the following table based on data contained in Company Exhibit B-5 which shows on an individual and composite basis the dollar amount and percentage thereof for the month of September 1974.

	R-2 Grand Total	R-2 Fuel Rev.	R-1 Fuel Rev.	(R-1)-(R-2) Diff.	Percent Increase
Bozrah	44,569	12,419	15,497	3,078	6.906
Groton	635,020	188,505	235,216	46,711	7.356
Jewett Cty.	28,054	6,656	8,306	1,650	5.882
Norwalk II	97,960	29,960	37,384	7,424	7.579
Norwalk III	79,016	19,410	24,219	4,809	6.086
Norwich	354,941	101,741	126,952	25,211	7.103
Wallingford	556,499	166,920	208,282	41,362	7.433
Composite	1,796,059			130,245	7.252

3/ During the course of the hearing in E-7743, the Company suggested a revision of the base cost of fuel to .651 cents per Kwh. It also suggested other amendments to its fuel clause including the treatment of imputed energy which would have increased significantly the amounts which would be charged the Municipals under the clause even with the higher base. Subsequent to this proffer, the Company, unilaterally without the consent of the Municipals or the approval of the Administrative Law Judge and without filing a revised fuel clause with the Commission, proceeded to bill the Municipals on the basis of its suggested revisions.

The overcharge resulting from the operation of the R-1 fuel clause in conjunction with the R-2 rate would appear contrary to the Commission's decision in Mississippi Power Company, 45 F.P.C. 269, 277-78 (1971). In that proceeding, the Commission excised an illegal surcharge from a tariff but expressly declined, pending a separate rate case determination, to permit either recoupment of revenues lost by action of the excission which would have been collected under the excised fuel clause or to permit an increase in revenues above the amounts attributed to the excised surcharge.

Because the R-2 fuel clause is defective in design and was deemed subject to suspension, and because the R-1 fuel clause is patently noncompatible with the R-2 base rate 4/, Commission precedent requires that the new rate be suspended for the full five-month period. In its order of July 12, 1974 in Boston Edison Co., E-8855, the Commission resolved the same issue as in the present case by granting a full five-month suspension:

> "We note that Edison's existing Rate S-2 (proposed to be increased by the instant filing and redesignated Rate S-3) and Edison's fuel adjustment clause are the subject of Commission investigation and hearing in Docket No. E-7738, et al., presently awaiting decision by the Presiding Administrative Law Judge. In that docket as in the instant filing, Edison's proposed fuel adjustment clause imputes the company's fuel cost variations to purchased power. Such imputation is not in conformance with our Opinion No. 633. However, since this very issue is undergoing consideration in the aforementioned docket, reconsideration of it in the instant docket would constitute improvident relitigation and would be an improper duplication of effort. Therefore, pending resolution of the issues in Docket No. E-7738, et al., we shall accept Edison's proposed fuel adjustment clause for filing and suspend it (in conjunction with other issues raised by the instant filing) for the full statutory period ...." (Order, p.2.)

4/ The R-1 fuel clause is also improperly based in that it includes imputed fuel costs in contravention of Opinion 633. See Initial Decision of Judge Lande of July 29, 1974, Docket No. E-7743. This impropriety of CL&P's fuel clause measured against Commission criteria was compounded by its unilateral, unfiled fuel clause change, see note 3 supra, which, inter alia, included imputed fuel costs to NEPEX energy transactions.

The facts are similar in the present case to those in Boston Edison, thus warranting imposition of the traditional five-month suspension of both R-2 and the R-2 fuel clause to provide equal treatment.

C. The Drastic Anticompetitive Effects of the Proposed Rate Design Requires Both Suspension for the Full Statutory Period and an Expedited Decision on Rate Design.

The Municipals in their petition for intervention pointed out to the Commission that both the R-1 and R-2 rate filings seek to impose upon the Municipals methods of operating their systems which depart from accepted utility practice and which are completely incompatible with the former operations and service relationship between CL&P and its Municipal wholesale customers. The effect of both rate forms is the same, namely, they effectively prevent the Municipals from competing with the Company for industrial sales and prevent the Municipals from seeking out new sources of power on any sort of a reasonable basis.

The Administrative Law Judge acknowledged the serious defects in CL&P's proposed R-1 rate design and in his Initial Decision of July 29, 1974, he rejected most of the rate design provisions that the Municipals had objected to. Many of the features of the R-1 rate rejected by the Administrative Law Judge are present in the R-2 rate. For example: (1) based on arguments presented by the Municipals and the Commission's Staff that the rationale for the four block structure is defective and that identification of loads with particular sources cannot be done on an interrelated system, Judge Lande ordered deleted from the tariff the hours use type energy block stratified rate with no specific demand charge and high load factor hours use block modifers; (2) he ordered eliminated from the rate the 12-month 100% demand ratchet provision; (3) he held the 95% leading power factor charges to be inappropriate and reduced the proposed lagging power factor of 97% to 90%; and (4) he found that CL&P's rates were discriminatory in design and unreasonable in level in that they placed the wholesale Municipal customers in a position where they would be unable to compete economically with CL&P in serving industrial customers.

Because the proposed R-2 continues the anticompetitive defects found by the Administrative Law Judge in R-1, the Municipals urged the Commission to sever the rate design issues in the R-2 filing from the other aspects of the proposed tariff and set it for

expedited hearing with elimination of the intermediate decision procedure. In view of th similarities between R-1 and R-2, it is the position of the Municipals that the Commission was in error in declining a five-month suspension and holding that phasing would not expedite resolution of the rate design issues. Indeed, the procedure proposed by the Municipals would probably permit decision of the rate design issues even in advance of the five-month statutory suspension period which Municipals request in this petition for rehearing.

In Gulf States Utilities v. F.P.C., 411 U.S.747 (1973) the Supreme Court held that the Commission was under a duty to seek to follow the policies of the antitrust laws and remove anticompetitive activities. Clearly, this on the facts of the present case warrants the five-month suspension authorized by the Federal Power Act.

D. Under the Circumstances of this Proceeding Suspension for Less Than The Full Five Month Statutory Period is an Abuse of Discretion.

The error made by the Commission in the realized rate of return, the double charges in fuel costs imposed upon the Municipals by virtue of the Commission's order which permits the R-1 fuel clause to operate in conjunction with the R-2 rate, coupled with the appreciable nature of the increase upon the Municipals, the anticompetitive impact of the rate structure and the fact that the Company has not asked for a shortened suspension period nor claimed or shown irreparable injury if the full five-month suspension period is granted, are compelling reasons for the Commission to grant a stay of its Order of August 30, 1974 5/ and modify its Order to permit suspension of the R-2 filing in its entirety for the full five-month period permitted by statute.

5/ The facts in this proceeding meet the criteria set forth for a stay in Consolidated Edison Co., 33 F.P.C. 965, 969-90(1965): (1) the Municipals are likely to prevail on the merits of their appeal re the error in the Commission's statement of the realized rate of return and the double charges imposed by the suspension of the fuel clause without correlative suspension of the entire rate; (2) in the absence of the stay the Municipals would be irreparably injured; (3) the stay would pose no adverse effects on the Company; and (4) the public interest would not be adversely affected by a stay of the Order.

In view of the above circumstances, it is clear that unless the full five-month suspension is granted in the present case, it is difficult to see how the suspension provision of the Act could ever be granted any meaningful application and would in effect be a statutory nullity.

The Congressional intent underlying enactment of Section 205(e) of the Federal Power Act and the long-standing practice of the Commission complementary to that intent requires the suspension of the proposed rate increase for the full five-month period provided by statute.

The legislative history of the suspension provisions of the Federal Power Act, clearly demonstrates that Congress intended the suspension provision for the benefit of the consumer, and except for a compromise to protect companies whose increases after investigation turned out to be justified, the duration of the suspension period would have extended until a final decision on each proceeding could be returned. Commission practice has almost uniformly been to honor this intent and to grant the full suspension period unless the case involved extraordinary circumstances.

The suspension provisions of the Federal Power Act, the Natural Gas Act, the Communication Act and the Civil Aeronautics Act are all patterned after and supported by the same legislative rationale as the suspension provisions of the Interstate Commerce Act. 6/ The only difference is that the period of permissible suspensions vary in keeping with the operation of each agency. 7/ The legislative purport of the Interstate Commerce Act suspension provision enacted initially in 1910 was to

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6/ Interstate Commerce Act as amended 49 U.S.C. §15 (7) (1964). See Hope Natural Gas Co. v. F.P.C., 196 F.2d 803, 806-807 (4th Cir., 1952); Hearings on H.R. 5423, House Comm. On Interstate & Foreign Commerce, 74th Cong., 2d Sess., 284-400 (statement of FPC Commissioner Seavey), 2170 (statement of Mr. Dozier De Van) (1935).

7/ FPC Sec. 205(e) "for a period not exceeding five months"; Natural Gas Act Sec. 4(e) "But not for a longer period than five months"; Federal Communications Act Sec. 204 "but not longer than three months beyond the time when it would otherwise go into effect"; Civil Aeronautics Act Sec. 642(g) the Civil Aeronautics Board may suspend proposed tariff rate change "for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Board may, from time to time, extend the period of suspension but not for a longer period in the aggregate than 180 days beyond the time when such tariff would otherwise go into effect."

postpone the date when the rate increase became effective until the ICC determined whether the rate should be approved. But to prevent undue hardship to the carriers, the Congress, instead of giving the ICC a blanket suspension period, set a time which it believed was sufficient for the completion of the investigatory/decision-making process: 8/

> "...it has been contended by some that the Commission should be empowered to postpone the date when the proposed increase in rates should become effective until it should complete an investigation into the reasonableness of the proposed increase; while on the other hand it is urged on behalf of the railroad companies that such action would bear unjustly upon the carriers, as, if at the termination of such investigation it should be found that the proposed increase was reasonable and proper, the carrier would have lost the entire benefit of the increase in rates during the period of investigation, without any means of reparation. A majority of the committee is of the opinion that . . . the commission should, in its discretion, be empowered by order stating its reasons therefore, to postpone the effective date of such increase or classification for a reasonable period to enable it to investigate the proposed rates.
>
> The bill fixes this reasonable period at sixty days, thus giving the commission ninety days in all within which to complete its investigation ...[which] will afford the commission opportunity with due diligence to complete or, at all events, to make substantial headway in any such investigation.... Some of those who favor the principle of the enactment wish the commission to have the power of unlimited postponement. The power is a new one, and your committee feels that with due diligence the Commission can within ninety days determine whether or not a proposed rate...should be approved."

8/ S. Rep. No. 355, 61st Cong., 2d Sess. Part 1 pp. 8-9 (1910) (emphasis added). Part 2 of that report (Views of the Minority) at page 9 advocated suspension until completion of the hearing.

The result of the general Congressional deliberations on the suspension period question was the Mann-Elkins Act of June 18, 1910. This Act permitted an initial period of suspension by the ICC of 120 days with an additional suspension for six months if the Commission investigation could be concluded in the 120-day period. In 1920, the maximum suspension period was reduced to five months. 9/ This reduction did not reflect a change of Congressional sentiment re the suspension period extending until the termination of the investigation and final decision but rather was intended to relieve carriers from a loss of revenues over an unreasonably lengthy period. The five-month period, as intended, gave relief to the carriers but was not sufficient to permit the ICC to fulfill the function stressed by Congress, namely, to make a proper investigation and final determination re the proposed rate change. Evaluation of the operation of the 1920 suspension provision in terms of the actual working experience of the ICC therefore lead to the amendment of the Act in 1927 increasing the maximum period of suspension to seven months where it remains today. 10/

The main concern of Congress, after ascertaining that it had set a period of suspension which was not confiscatory, was that the period be sufficient for and utilized by the subject commission to finally or substantially determine the lawfulness of a rate before visiting it on the public. In terms of the operation of the Interstate Commerce Commission , Mr. W. P. Bartel in his article "Investigation and Suspension Proceedings," 11/ observed that the exercise of the suspension authority "when higher charges are proposed relieves the public from paying such higher charges until the Commission has first made an investigation and passed upon the reasonableness and lawfulness thereof."

The foregoing history of the evolution of the Interstate Commerce Act suspension provision focuses on and is a mirror of Congressional intent. Congress in setting a maximum suspension period undertook to assure that the lawfulness of the proposed change is determined completely

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9/ Act of Feb. 28, 1920, c.91, §418, 41 Stat. 484.
10/ Act of March 4, 1927, c. 510, §2, 44 Stat. 1447.
11/ 14 I.C.C. Pract. J. 523 (1946-47) (Emphasis added).

or substantially before the change becomes effective. Thus, under ICC practice, suspension for a period less than the statutory seven months is availed of only in cases which the Commission believes can be swiftly settled.

The legislative intent relating to suspension provisions in general was developed extensively during the proceedings leading to the enactment of, and the subsequent amendments to, the Interstate Commerce Act. As previously noted, the suspension provisions of the other regulatory statutes are taken bodily from this Act except for changes in the time period to reflect differences in operating conditions. From the legislative history of the later suspension provisions, it is apparent that Congressional intent with respect to suspension provisions has not changed. There is, moreover, support in the legislative hearings on the later suspension provisions indicating no deviation from the intent expressed in the Interstate Commerce Act, this is, that the period of suspension should be as close as possible to the time required for completion of an investigation of a rate and a decision to approve or disapprove, without however being long enough to amount to an unreasonable burden on the company.

By way of illustration, in testimony offered at hearings on the suspension provision of the Natural Gas Act, Mr. H. Booth, Acting Counsel of the Illinois Commerce Commission recognized the purport of Congress to give sufficient time to the Commission to arrive at a decision on the lawfulness of the proposed change. Mr. Booth in suggesting amendments to the Federal Power Act stated that:

> "The third amendment that might be made relates to that part of section 4(e) which provides that the Commission may suspend increased rate schedules for a period not to exceed 5 months. I am of the opinion that 5 months is too short a period for an investigation of increased rate schedules for interstate natural gas utilities. If the increased schedule goes into effect it will undoubtedly result in efforts by the local distributing company or companies affected thereby to obtain increases in rates to cover the additional cost of such gas. For that reason I believe it of considerable importance that...the Commission be given ample opportunity to enter a final order in such case. The 5-month period should, therefore, be changed to a period of from 9 to 12 months."

In contrast, the balancing aspect of the suspension provision recognizing not just the purport of the period of suspension but also the necessity of balancing the needs of the consumer against the needs of the company is illustrated in the statement of Commissioner Clyde L. Seavey of the FPC in hearings on the suspension provision of the Federal Power Act. Commissioner Seavey reocgnized that the suspension provision serves "the purpose of investigating the reasonableness of change." 12/ However, he observed that "If the investigation cannot be completed within the 5 months' period, the new rate may go into effect...." 13/

As the legislative history above recounted demonstrates, any decision of the Commission to suspend CL&P's proposed increase in rates for less than the full statutory period would be contrary to and in disregard of the legislative intent underlying the suspension provision, -- a legislative intent which the Commission recognized in its long-established administrative practice of almost uniformly granting the full statutory suspension period. 14/ The Commission articulated this rationale with reference to the parallel suspension provision of the Natural Gas Act in Yucca Petroleum Co., 29 F.P.C. 211, 212(1963):

> "In our view, a lesser suspension period than the five month suspension period permitted under Section 4(e) of the Natural Gas Act should not be authorized except in those instances when strong equitable considerations dictate that a shortened suspension period is warranted."

A regulatory commission usually needs at least the full time provided by the suspension period to examine the proposed rate in order to ascertain its lawfulness. Consequently, any departure from the practice of suspension for the full statutory period can only be justified upon a most conclusive showing that such a departure is in the interest of the public, as for example,

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12/ Hearings on H. R. 5423 Before The House Comm. on Interstate and Foreign Commerce, 74th Cong., 1st Sess. Part 1 at p. 385 (1935).

13/ Id.

14/ The Commission articulated the Congressional intent in Hope Natural Gas Co., 8 F.P.C. 1290-1291 (1949) and has consistently followed it. See e.g., the following order suspending rate schedules: 2 F.P.C. at 617, 750, 830 and 838; 5 F.P.C. at 397, 407, 666, 805, 897, 946, 964, 974; 7 F.P.C. at 456, 482, 781, 683, 792, 844, 901, 943, 1016, 1132, 1133; 9 F.P.C. at 555, 682, 687, 700, 996, 1213, 1249.

where unusual hardship will result to the applicant company, or there is strong probability of a settlement before the end of the suspension period. The necessity for Commission utilization of the full suspension period is particularly obvious with respect to the FPC. The Commission has to look not only to the electric company proposing the rate increase but also to the distributing company which purchases from the wholesaler and the distributors customers. The proposed increase starts a chain reaction effect beginning at the wholesaler and working down to the ultimate consumer. It is apparent that the Supreme Court's mandate to the Commission to protect consumers from exploitation 15/ should be read in conjunction with the aforementioned legislative intent, as requiring the Commission to adopt the full suspension period unless "strong equitable considerations dictate that a shortened suspension period is warranted." The equities in this proceeding lie on the side of a full suspension if substantial detriment to the Company's customers is to be avoided. 16/ The Congress provided the suspension period for the benefit of the consumer. Congress has determined that a five-month suspension period placed the interests of the company and the consumer in balance, and does not place an unreasonable burden on the company. It is not within the province of the Commission to substitute its judgment on this question for that of the Congress. If a change is required, it must be accomplished by amendment to the statute.

14/ continued

For more recent practice under the Federal Power Act, see Wisconsin Electric Power Co., Docket No. E-7546, July 21, 1970 (suspending proposed changes resulting in a 9.1% rate increase to cities); Georgia Power Co., Docket No. E-7548, July 28, 1970 (suspending 34% rate increase); New England Power Co., Docket No. E-7541, August 14, 1970 (suspending proposed fuel adjustment clause change); Kentucky Power Co., Docket No. E-7565, October 2, 1970 (suspending proposed amendment of procedure for notice of termination of service); Delmarva Power & Light Co., Docket No. E-7560, November 27, 1970; Order of August 14, 1972, Connecticut Light & Power Co., Docket E-7743; Order of August 14, 1972, Public Service Co. of New Hampshire, Docket E-7742; and Boston Edison Co., Order of July 12, 1974, Docket No. E-8855.

15/ See FPC v. Hope Natural Gas Co., 320 U.S. 591, 610, 612(1944); Interstate Natural Gas Co. v. F.P.C., 331 U.S. 682, 690 (1947).

16/ See Tennessee Gas Transmission Co., 13 F.P.C. 772 (1954). There is no showing here that CL&P would operate at a deficit and considerable doubt as to the deficiency in its rate of return.

The reasonableness of the suspension period was acknowledged in the Hope case. 17/ In that case, the United States Court of Appeals for the Fourth Circuit held that even where it is later determined that a part of the increase was justified, the suspension power and period is a reasonable one. The Court said: 18/

> "It is true, of course, that a utility is entitled to rates that are just and reasonable; but that is not to say that rates must fluctuate automatically with every change in economic conditions or that a reasonable time may not be allowed for determining the reasonableness of a proposed increase in rates before it allowed to go into effect. Any loss sustained by a maintenance of the status quo while such determination is being made is properly considered, not as a violation of constitutional right, but as a necessary incident of rate regulation so long as the period of suspension does not 'overpass the bounds of reason.'"

It is a matter of fact that the Commission's experience has indicated that the five-month suspension period has, with the increase in filings by companies over the years, for some time been inadequate to complete the necessary investigation of the lawfulness of the proposed filing. This presents no reason to ignore or scrap the suspension provision, thereby depriving the consumer of the protection provided for his benefit by Congress. Rather the circumstances make suspension for the full statutory period a virtual necessity if the Congressional intent -- complete or substantial determination of the lawfulness of a rate prior to its operation -- is to be achieved. The discretion delegated by Congress to the Commission may be exercised only in a manner which is reasonable and consistent with the purposes of the Act. It is evident that the Commission's suspension of the proposed rate increase for less than the statutory period would be a flagrant abuse of that discretion.

17/ Hope Natural Gas Co. v. F.P.C., 196 F.2d 803 (4th Cir. 1952).

18/ Id. at 809 (emphasis added).

E. One Day Suspension of R-2 Forces Irreparable Revenue Loss to the Municipals.

Under even ordinary circumstances, a one-day suspension of a rate does not permit adequate time for a municipal utility system to factor the rate increase into its retail rates and put those increased rates into effect. Since the R-2 rate proposal is a change in rate design as well as a rate increase, the process goes beyond the mere factoring cost increases into an established retail rate structure, it also involves redesign of rates by the Municipals to reflect changes in operating conditions from the status quo. The smaller systems such as Jewett City must hire outside experts to evaluate the proposed rate increase by the Company and redesign their rates to collect that increase. The larger systems may have technical staff on hand to do the evaluation and redesign, however, once the changes are arrived at, both the small and large systems face the same problems, the redesigned rates must be approved by the governing body of the utility and in some instances also by the governing body of the municipality. These factors make it clear that the Municipals cannot put new retail rates into effect concurrently with the imposition of the increased wholesale charges upon the municipal systems. The Municipals made it clear in their "Petition to Intervene" that it would take up to the full five-month statutory period to evaluate the proposed rate, redesign their retail rates, receive approval for those redesigned rates and put those rates into effect.

It is apparent, therefore, that a one-day suspension creates a serious cash flow problem for the Municipals which must absorb the increase for several months until they can legitimately pass on the increases to their customers. The damages flowing from this cash flow problem are immediate and will not and indeed cannot be remedied by any subsequent refunding of excess charges. See F.P.C. v. Hunt, 376 U.S. 515, 524-25(1964). 19/ The problem is compounded in this proceeding by the fact that the one-day suspension order was dated Friday, August 30, which was the commencement of the Labor Day weekend making it absolutely impossible to put any retail

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19/ Interest rates on refunds are only 7%, however, the interest rate which the Company would have to pay were it to borrow on the market is 11%. Thus the Municipals can be said to have been compelled to grant unsubsidized loans for an indeterminant period to the Company without hope of recoupment.

increase into effect on September 2 which was Labor Day and the effective date for the rate set by the Commission's Order. Furthermore, the Municipals did not receive copies of the August 30th Order until September 4, after the effective date of the rate increase and could even in the best of circumstances not have taken action to put retail increases into effect until after the effective date. Finally, the Municipals contacted the Commission on the 3rd of September to inquire if an order had been issued in the proceeding and were informed that it had not been.

Certainly the factors noted in this section of the Municipal's petition for emergency relief and rehearing coupled with the factors discussed in the previous sections make it clear that the full five-month suspension period is required to permit an orderly transition to a new rate without irreparable damage to the Municipals.

WHEREFORE, for the foregoing reasons, the Municipals request that the Commission grant an emergency stay of its Order of August 30, 1974 pending rehearing and grant rehearing requested by the Municipals and pursuant to these requests modify its Order to permit suspension of the R-2 rate in its entirety including the fuel clause for the full five-month statutory period and permit expedited decision of the rate design issue by phasing the proceeding and eliminating the intermediate decision procedure.

Respectfully submitted,

Charles F. Wheatley, Jr.

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John A. Cameron

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September 6, 1974

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Federal and State Regulatory Commissions share a common objective: ensuring that reliable utility services are made available to each growing customer [illegible] without [illegible]. [illegible] will be directed toward the problems of the electric utility industry, although the regulatory [illegible] would be largely applicable to all utilities.

The electric utility industry is the most capital intensive industry in the United States. [illegible]

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The Dimensions of the Problem

The financial squeeze of the electric utility industry and its customers is [illegible] the [illegible] [illegible]; [illegible] regulators [illegible] to meet their responsibilities; [illegible] is [illegible] called for [illegible]. [illegible] highlights an illustration of the problem.

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1. profitability has declined;
2. the quality of earnings has suffered;
3. investors have acknowledged the declining quality of earnings and increase in financial risk via a drop in the price earning ratio;
4. rating agencies have acknowledged the presence of higher financial risk through a drop in bond ratings;
5. electric utilities are in a competitively poor position to attract additional capital (either debt, preferred or common equity).

The Utility Executives' View

From the utility executives' point of view, these financial indicators boil down to five basic facts:

1. difficulty in simply raising adequate amounts of cash;
2. difficulties in attracting new capital and the accompanying high costs of such capital;
3. inability to earn the return permitted by regulatory authorities in some cases and inadequate returns allowed in other cases;
4. regulatory lag for rate increases and financing of new facilities;
5. [illegible] problems with the [illegible] and [illegible] [illegible] from [illegible] [illegible]; and [illegible] of facilities.

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